

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**CONSOLIDATED MOTION RECORD OF THE PLAINTIFF
(1) MOTION FOR DISMISS ORDER AND DISTRIBUTION ORDER
(2) MOTION FOR FEES, HONORARIUM AND FUNDING ORDER**

November 28, 2024

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INDEX

INDEX		
Tab	Documents	Page
1.	Notice of Motion (Dismiss Order and Distribution Order) dated November 28, 2024	1
A.	Schedule “A” – Dismiss Order	8
	Schedule “1” – Settlement Agreement dated September 11, 2024	13
B.	Schedule “B” – Distribution Order	84
	Schedule “1” – Settlement Agreement dated September 11, 2024	89
	Schedule “2” – Short Form Second Notice	160
	Schedule “3” – Long Form Second Notice	162
	Schedule “4” – Internet Banner Second Notice	167
	Schedule “5” – Plan of Notice	169
	Schedule “6” – Distribution Protocol	172
	Schedule “7” – Claim Form	190
2.	Notice of Motion (Fees, Honorarium and Funding Order)	198
A.	Schedule “A” – Fees, Honorarium and Funding Order	205
	Schedule “1” – Settlement Agreement dated September 11, 2024	209
3.	Affidavit of Peter Westwood sworn on November 25, 2024	281
A.	Exhibit “A” – Retainer Agreement	288
4.	Affidavit of Ivan Bobanovic affirmed on November 28, 2024	299
A.	Exhibit “A” – Screenshots from a sample claim from the online portal of the Auto Parts Class Action administration	314
B.	Exhibit “B” – Copy of paper Claim Form	321
5.	Affidavit of Charles M. Wright affirmed on November 28, 2024	328
A.	Exhibit “A” – Order of Justice Akbarali dated October 1, 2024	385
B.	Exhibit “B” – Settlement Agreement dated September 11, 2024	391

INDEX		
Tab	Documents	Page
C.	Exhibit “C” – Summary Rationale for the Settlement	462
D.	Exhibit “D” – Guide to the Distribution Protocol	466
E.	Exhibit “E” – Submission from Questrade to Canadian Securities Administrators	473
F.	Exhibit “F” – Amended and Restated Agreement dated March 8, 2024	479
G.	Exhibit “G” – Order of Justice Belobaba dated June 20, 2019	484
H.	Exhibit “H” – Funding Agreement	489
I.	Exhibit “I” – ASCJ Statement of Account dated as of October 31, 2024	501
6.	Affidavit of Charles M. Wright affirmed on September 16, 2024	507
A.	Exhibit “A” – Third Fresh as Amended Statement of Claim filed February 17, 2021	522
B.	Exhibit “B” – Order of Justice Belobaba dated February 27, 2020	566
C.	Exhibit “C” – Order of Justice Belobaba dated December 14, 2021	573

TAB 1

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION
(DISMISS ORDER AND DISTRIBUTION ORDER)**

The Plaintiff will make a motion to the Honourable Justice Akbarali on December 9, 2024, at 10:00am, or as soon after that time as the motion can be heard.

Capitalized terms used in this Notice of Motion that are not otherwise defined herein shall have the meaning set out in the Settlement Agreement between the Plaintiff and the Defendant dated September 11, 2024 (“**Settlement Agreement**”).

PROPOSED METHOD OF HEARING:

The motion is to be heard by video conference.

THIS MOTION IS FOR:

1. An order, among other things, approving the Settlement Agreement and dismissing the action against the Defendant without costs and with prejudice, substantially in the form attached hereto as **Schedule “A” (“Dismiss Order”)**;

2. An order approving Second Notice and the Plan of Notice for disseminating Second Notice, the Distribution Protocol, the form and content of the Claim Form and approving the claims process, the appointment of Ricepoint Administration Inc., doing business as Verita Global (“**Verita**”) as the Administrator, and the delivery of the data required under section 10.2(1) of the Settlement Agreement, substantially in the form attached hereto as **Schedule “B” (“Distribution Order”)**; and
3. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. On April 6, 2018, this action was commenced against the Defendant, which is the trustee and manager of the TD Mutual Funds, seeking to recover damages arising from the payment of trailing commissions by the Defendant to Discount Brokers in respect of TD Mutual Funds held by the Plaintiff and other Class Members;
2. On February 27, 2020, Justice Belobaba certified this action as a class proceeding;
3. Following hard-fought, arm’s-length negotiations, the Plaintiff and the Defendant entered into the Settlement Agreement;
4. By order of this Court dated October 1, 2024: (i) the class definition was amended for settlement purposes; (ii) First Notice and the plan for disseminating First Notice was approved; (iii) a supplemental opt-out right for Eligible Supplemental Opt-Out Parties was approved; and (iv) a procedure for Class Members to object to, or comment on, the Settlement, Distribution Protocol, or the request for Class Counsel Fees and Class Counsel Disbursements was prescribed;
5. No supplemental opt-outs have been received as of November 28, 2024;

6. No objections or comments on the Settlement, Distribution Protocol or request for Class Counsel Fees and Class Counsel Disbursements were received as of November 18, 2024, which was the objection deadline;

Dismiss Order

7. The Defendant consents to the Dismiss Order;

8. The Plaintiff supports the proposed Settlement Agreement;

9. The Settlement Agreement is fair, reasonable and in the best interest of Class Members;

Distribution Order

10. The Defendant does not oppose the Distribution Order;

11. The Plaintiff supports the Distribution Protocol;

12. The Distribution Protocol is fair, reasonable and in the best interest of Class Members;

13. The proposed claims process is fair and reasonable and will be facilitated by data provided by the Defendant pursuant to the terms of the Settlement Agreement;

14. Verita consents to its appointment as Administrator;

15. The Plaintiff proposes that Second Notice be disseminated in accordance with the Plan of Notice;

16. Second Notice advises Class Members of: (i) the Settlement Agreement; (ii) the approval of the Settlement Agreement, Class Counsel Fees and Class Counsel Disbursements and the Distribution Protocol (if they are approved); and (iii) the claims process, how to apply for settlement benefits and the Claims Bar Deadline;

17. The short-form and internet banner versions of the Second Notice provide summary information about the settlement, and direct readers to the long-form version of the Second Notice for further information;
18. Sections 12, 17, 19, 20, 21, 29, 32, 33 of the *Class Proceedings Act, 1992*, SO 1992, c 6 (prior to the amendments on October 1, 2020);
19. Rules 1.04, 2, 12 and 37 of the *Rules of Civil Procedure*, RRO 1990, Reg 194; and
20. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Peter Westwood sworn November 25, 2024;
2. Affidavit of Ivan Bobanovic affirmed November 28, 2024;
3. Affidavit of Charles M. Wright affirmed September 16, 2024;
4. Affidavit of Charles M. Wright affirmed November 28, 2024; and
5. Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 28, 2024

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SCHEDULE

“A”

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(DISMISS ORDER)**

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the settlement between the Plaintiff and the Defendant, and dismissing this action as against the Defendant, was heard on December 9, 2024 at 10:00 am.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated September 11, 2024 attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been no written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Defendant consents to this Order;

- 2 -

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
5. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
6. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992*, and shall be implemented and enforced in accordance with its terms.
7. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 8, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Class Members who are resident in any province of territory where the release of one tortfeasor is a release of all tortfeasors.

9. **THIS COURT ORDERS** that, upon the Effective Date, each Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors, covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
10. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over release from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions.
11. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
12. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement or with respect to the Distribution Protocol, including administration, investment, or distribution of the Trust Account.

13. **THIS COURT ORDERS** that upon the Effective Date, the Action is hereby dismissed as against the Defendant, without costs and with prejudice.

The Honourable Justice Akbarali

SCHEDULE "1"

Settlement Agreement dated
September 11, 2024

SETTLEMENT AGREEMENT

Made as of September 11, 2024

Between

PETER WESTWOOD

(“Plaintiff”)

and

TD ASSET MANAGEMENT INC.

(“Defendant”)

SETTLEMENT AGREEMENT
TABLE OF CONTENTS

RECITALS	1
SECTION 1 - DEFINITIONS.....	3
SECTION 2 – APPROVAL AND NOTICE PROCESS	10
2.1 Commercially Reasonable Efforts	10
2.2 Motion for First Order	10
2.3 Motion for Dismiss Order and Distribution Order	10
2.4 Pre-Motion Confidentiality	11
SECTION 3 – SETTLEMENT BENEFITS	11
3.1 Payment of Settlement Amount	11
3.2 Taxes and Interest	12
SECTION 4 – NO REVERSION.....	13
4.1 No Reversion	13
SECTION 5 – OPTING-OUT.....	13
5.1 Opt-Outs.....	13
SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT.....	14
6.1 Right of Termination.....	14
6.2 If Settlement Agreement is Terminated.....	15
6.3 Return of Settlement Amount Following Termination.....	15
6.4 Survival of Provisions After Termination.....	15
SECTION 7 – RELEASES AND DISMISSALS.....	16
7.1 Release of Releasees	16
7.2 Covenant Not To Sue.....	16
7.3 No Further Claims.....	16
7.4 Dismissal of the Action.....	17
7.5 Releases a Material Term.....	17
SECTION 8 – CLAIMS AGAINST OTHER ENTITIES.....	17
8.1 Claims Against Other Entities Reserved.....	17
SECTION 9 – EFFECT OF SETTLEMENT.....	17
9.1 No Admission of Liability	17
9.2 Agreement Not Evidence	18
9.3 No Further Litigation	18

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION	18
10.1 Appointment of the Administrator.....	18
10.2 Information and Assistance from the Defendant	18
10.3 No Responsibility for Administration or Fees	19
SECTION 11 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATION EXPENSES	19
11.1 Class Counsel Fees, Class Counsel Disbursements and Administration Expenses 19	
SECTION 12 – FUNDING AND HONORARIUM.....	20
12.1 Funding and Honorarium.....	20
12.2 Release of the Funder’s Security	21
SECTION 13 – SUBSEQUENT SETTLEMENTS OF OTHER 2018 ACTIONS.....	21
13.1 Definitions.....	21
13.2 Obligations in the Event of a Subsequent Settlement.....	22
SECTION 14 – MISCELLANEOUS	24
14.1 Motions for Directions.....	24
14.2 Releasees Have No Liability for Administration.....	24
14.3 Headings, etc.....	24
14.4 Computation of Time.....	24
14.5 Ongoing Jurisdiction.....	25
14.6 Governing Law	25
14.7 Entire Agreement.....	25
14.8 Amendments	25
14.9 Binding Effect.....	26
14.10 Counterparts.....	26
14.11 Negotiated Agreement	26
14.12 Language.....	26
14.13 Recitals.....	27
14.14 Schedules	27
14.15 Acknowledgements.....	27
14.16 Authorized Signatures.....	27
14.17 Notice.....	28
14.18 Date of Execution	28

RECITALS

A. WHEREAS the Action was commenced by the original plaintiff, Gary Stenzler, in Ontario on April 6, 2018;

B. WHEREAS the Plaintiff, Peter Westwood, was added as the plaintiff in the Action in substitution for Mr. Stenzler in accordance with the Order of the Honourable Justice Belobaba dated February 5, 2021;

C. WHEREAS Class Members were provided an opportunity to opt out of the Action, the deadline for Class Members to opt out of the Action expired on April 8, 2022, and there were no opt-outs from the Action;

D. WHEREAS the Action alleges, among other things, that the Defendant paid trailing commissions out of the assets of the TD Mutual Funds to Discount Brokers, and that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to Discount Brokers were excessive, inflated and/or unearned, and further that the Defendant made misrepresentations about the nature of the trailing commission payments;

E. WHEREAS the Defendant has denied and continues to deny each and all of the claims and allegations of wrongdoing made by the Plaintiff in the Action, including any and all allegations that the Plaintiff and/or the Class Members have suffered any harm or damage whatsoever, and all claims and allegations of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action, or otherwise;

F. WHEREAS the Plaintiff, Class Counsel and the Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Defendant;

G. WHEREAS the Plaintiff and Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defences thereto, and the applicable law, that: (1) it is in the best interests of the Class to enter into this Settlement Agreement in order to avoid the

uncertainties of litigation and to ensure that the benefits reflected herein, including the amount to be paid by the Defendant under this Settlement Agreement, are obtained for the Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the Class;

H. WHEREAS the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Class in the Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

I. WHEREAS counsel for the Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

J. WHEREAS as a result of these settlement discussions and negotiations, the Defendant and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendant and the Plaintiff, both individually and on behalf of the Class, subject to approval of the Court;

K. WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class;

L. WHEREAS the Parties therefore wish to and hereby finally resolve, without admission of liability, the Action against the Defendant;

M. WHEREAS the Parties intend to provide a supplemental opt-out right to those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled and dismissed with prejudice,

all without costs as to the Plaintiff, the Class or the Defendant, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

(1) **2022 Actions** means, collectively, *Aggarwal v TD Asset Management Inc.*, Ontario Superior Court of Justice, Court File No. CV-22-691344-00CP, *Ciardullo v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-684723-00CP, *Ciardullo et al. v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-685386-00CP, *Yeats v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-22-690373-00CP, *Woodard v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-22-690374-00CP, *Yeats v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-22-690519-00CP, *DeJong v. RBC Global Asset Management Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-691343-00CP, and *Aizic v. Natcan Trust Company et al.*, Ontario Superior Court of Justice, Court File No. CV-23-00697428-00CP.

(2) **Action** means *Westwood v TD Asset Management Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-595380-00CP.

(3) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

(4) **Administrator** means the third party professional firm and any employees of such firm, selected at arm's-length by Class Counsel, and appointed by the Court to facilitate dissemination of notices, receive and review claims and administer the Settlement Amount in accordance with the Distribution Protocol, and report to the Parties and the Court on the administration of the Settlement.

(5) **Adverse Decision** has the meaning given to such term in Section 13.1(1)(a).

- (6) **Class** means all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to the Date of Execution, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.
- (7) **Class Counsel** means Siskinds LLP.
- (8) **Class Counsel Disbursements** means the disbursements, administration expenses, and applicable taxes incurred by Class Counsel and Bates Barristers P.C. in the prosecution of the Action, as well as any adverse costs awards issued against the Plaintiff in the Action.
- (9) **Class Counsel Fees** means the fees of Class Counsel and Bates Barristers P.C., and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Class Members to any other body or Person.
- (10) **Class Member** means a member of the Class.
- (11) **Court** means the Ontario Superior Court of Justice.
- (12) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.
- (13) **Defendant** means TD Asset Management Inc.
- (14) **Defendant Claims** means claims, including Unknown Claims, that any Releasee may have against a Releasor or Class Counsel relating to the institution, prosecution, or settlement of the Action.
- (15) **Discount Broker Actions** means, collectively, *Frayce et al. v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-638868-00CP, *Frayce v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-634551-00CP, and *Michaud et al. v BBS Securities Inc. et al.*, Supreme Court of British Columbia, Court File No. VLC-S-1912710.
- (16) **Discount Brokers** means entities providing “order-execution only services” as defined in Rule 3200 of the IIROC Dealer Member Rules or entities performing a function similar to “order-execution only services” prior to the introduction of that definition in Rule 3200 of the IIROC

Dealer Member Rules, including (without limitation) TD Direct Investing, a division of TD Waterhouse Canada Inc., a subsidiary of The Toronto-Dominion Bank, or such other discount brokerage business operated by The Toronto-Dominion Bank from time to time.

(17) ***Dismiss Order*** has the meaning given to such term in Section 2.3(1).

(18) ***Distribution Order*** has the meaning given to such term in Section 2.3(1).

(19) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Court.

(20) ***Effective Date*** means the date on which the Dismiss Order has become a Final Order.

(21) ***Excluded Persons*** means:

- (a) the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund;
- (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Belobaba dated December 14, 2021 providing for certification notice and an opt-out process; or
- (c) any Person who would otherwise be a Class Member and who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 but who validly excludes themselves from the Action in accordance with the First Order.

(22) ***Final Order*** means an order of the Court from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or a notice of appeal.

- (23) **First Notice** means the short-form, long-form and internet banner notices of the pendency of the motion for the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule E**, **Schedule F** and **Schedule G** hereto or as fixed by the Court.
- (24) **First Order** has the meaning given to such term in Section 2.2(1).
- (25) **Funder** means Claims Funding International, PLC.
- (26) **Funder's Security** means the amounts paid into Court by the Funder as security for its obligations pursuant to the Funding Order.
- (27) **Funding Agreement** means the agreement entered into on March 29, 2019 between the original plaintiff in the Action, Gary Stenzler, and the Funder for the provision of, among other things, an indemnity against adverse costs in exchange for the payment of the Funding Commission and subsequently approved by the Court pursuant to the Funding Order.
- (28) **Funding Commission** means the amount to be paid to the Funder pursuant to the Funding Agreement.
- (29) **Funding Order** means the Order of the Honourable Justice Belobaba dated June 20, 2019 approving the Funding Agreement.
- (30) **Implementation Date** means the date on which both the Dismiss Order and the Distribution Order have become Final Orders.
- (31) **Material Adverse Litigation Event** has the meaning given to such term in Section 13.1(1)(a).
- (32) **Other 2018 Actions** means, collectively, *Sage v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-18-600380-00CP, *Gilani v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-611748-00CP, *Pozgaj v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-18-605345-00CP, *Pozgaj v. Mackenzie Financial Corporation et al.*, Ontario Superior Court of Justice, Court File No. CV-18-610311-00CP, *Pozgaj v. National Bank Investments Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-18-611745-00CP, and *Ross v. RBC Global*

Asset Management Inc. et al., Ontario Superior Court of Justice, Court File No. CV-18-611743-00CP.

(33) ***Net Settlement Amount*** means the amount available in the Trust Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, the Funding Commission and any other amounts approved by the Court.

(34) ***Parties*** means the Defendant, the Plaintiff and, where necessary, the Class Members.

(35) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(36) ***Plaintiff*** means Peter Westwood.

(37) ***Plan of Notice*** means the plan for disseminating the First Notice and the Second Notice to the Class substantially in the form attached as **Schedule D** hereto or as fixed by the Court.

(38) ***Released Claims*** mean any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, lawyers' fees, disgorgement, restitution and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several, and solidarily in the Province of Quebec), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Action, or any amended complaint or pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to any concerns relating to trailing commissions paid by the Defendant to Discount Brokers in respect of the TD Mutual Funds.

(39) **Releasees** means, jointly and severally, individually and collectively, the Defendant and each of its past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing; but excluding TD Waterhouse Canada Inc.

(40) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers, assigns, beneficiaries, trustees, agents and legal or other representatives.

(41) **Second Notice** means the short-form, long-form and internet banner notices of the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule H**, **Schedule I** and **Schedule J** hereto or as fixed by the Court.

(42) **Settlement** means the settlement of the Action on the terms provided in this Settlement Agreement.

(43) **Settlement Agreement** means this agreement, including the recitals and schedules.

(44) **Settlement Amount** means seventy million two hundred and fifty thousand Canadian dollars (C\$70,250,000).

(45) **Subsequent Settlement** has the meaning given to such term in Section 13.1(1)(b).

(46) **Subsequent Settlement Amount** has the meaning given to such term in Section 13.1(1)(c).

(47) **TD Mutual Funds** means all mutual fund trusts (including, without limitation, all series of units thereof) of which the Defendant is trustee or was trustee at any time on or prior to the Date of Execution (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated,

(ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

(48) **Termination Notice** has the meaning given to such term in Section 6.1(1).

(49) **Trust Account** means a guaranteed investment product, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Class Counsel or the Administrator, once appointed, for the benefit of the Class Members, as provided for in this Settlement Agreement.

(50) **Unknown Claims** means any and all Released Claims against the Releasees which Releasers do not know or suspect to exist in his, her, or its favour as of the Effective Date, and any Defendant Claims against Releasers which Releasees do not know or suspect to exist in his, her, or its favour as of the Effective Date, which if known by the Releasers or Releasees might have affected his, her, or its decision(s) with respect to the settlement. The Releasers and Releasees may hereafter discover facts other than or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Defendant Claims. Nevertheless, the Plaintiff and the Releasees shall expressly, fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Dismiss Order (when it becomes a Final Order) shall have, fully, finally, and forever settled and released, any and all Released Claims and Defendant Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiff and the Releasees acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims and Defendant Claims was separately bargained for and was a key element of the Settlement Agreement.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.

SECTION 2 – APPROVAL AND NOTICE PROCESS

2.1 Commercially Reasonable Efforts

(1) The Parties shall use their commercially reasonable efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Action.

2.2 Motion for First Order

(1) The Plaintiff shall file a motion before the Court, as soon as practicable after the Date of Execution, for an order substantially in the form attached as **Schedule A (“First Order”)**.

(2) The Defendant will consent to the issuance of the First Order.

(3) As soon as practicable following entry of the First Order, Class Counsel shall cause the First Notice to be published and distributed in accordance with the Plan of Notice and the direction of the Court. The costs of publishing and distributing the First Notice shall be paid from the Trust Account as and when incurred.

2.3 Motion for Dismiss Order and Distribution Order

(1) The Plaintiff shall file a motion before the Court for orders substantially in the form attached as **Schedule B (“Dismiss Order”)** and **Schedule C (“Distribution Order”)** as soon as practicable after:

(a) the First Order has been granted; and

(b) the notices described in Section 2.2(3) have been published.

(2) The Defendant will consent to the issuance of the Dismiss Order. The Defendant will not oppose the issuance of the Distribution Order.

(3) At the motion for the Dismiss Order and the Distribution Order, Class Counsel shall propose for approval by the Court the Distribution Protocol or such other plan for distributing the Net Settlement Amount to the Class as Class Counsel may advise. The Distribution Protocol is the responsibility of Class Counsel and the Defendant has no involvement in its design. Accordingly, the approval of the Distribution Protocol shall be considered separately from the approval of the

Settlement and is not a condition of the approval of the Settlement itself and the dismissal of the Action as against the Defendant without costs and with prejudice in accordance with the Dismiss Order.

(4) The Defendant will take no position or make any submission to the Court concerning the Distribution Protocol, except as requested or required by the Court.

(5) The Plaintiff may make any amendments to the Distribution Protocol, the Distribution Order, the Second Notice or the Plan of Notice as it relates to the Second Notice requested or directed by the Court.

(6) As soon as practicable following the Implementation Date, Class Counsel and the Administrator shall cause the Second Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court. The costs of publishing the Second Notice shall be paid from the Trust Account as and when incurred.

2.4 Pre-Motion Confidentiality

(1) Until the motion required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), pursuant to regulatory requirements as necessary to give effect to its terms, or as otherwise required by law.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) The Defendant shall pay the Settlement Amount to Class Counsel by November 8, 2024 for deposit into the Trust Account.

(2) Payment of the amount specified in Section 3.1(1) shall be made by wire transfer. At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank,

ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest, taxes and costs.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Action, including, but not limited to, legal fees, judicial costs, taxes or costs of notice.

(6) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.

(7) Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

(8) Within thirty (30) days of the Effective Date, Class Counsel shall transfer control of the Trust Account to the Administrator, but before doing so Class Counsel may deduct and retain from the monies in the Trust Account the Class Counsel Fees and the Class Counsel Disbursements approved by the Court.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Class. The Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including

any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Administrator.

SECTION 4 – NO REVERSION

4.1 No Reversion

(1) Unless this Settlement Agreement is terminated as provided herein, the Defendant shall not be entitled to the repayment from the Plaintiff of any portion of the Settlement Amount or any interest earned on the Settlement Amount in the Trust Account. In the event this Settlement Agreement is terminated, the Defendant shall be entitled to the repayment only to the extent of and in accordance with Section 6.3(1).

SECTION 5 – OPTING-OUT

5.1 Opt-Outs

(2) An opt-out right was provided by the Order of the Honourable Justice Belobaba dated December 14, 2021. The opt-out deadline expired on April 8, 2022 pursuant to that Order. The Parties acknowledge and confirm that RicePoint Administration Inc., the notice and opt-out administrator appointed by the Court pursuant to the Order of the Honourable Justice Belobaba dated December 14, 2021, confirmed that no Person opted out of the Action.

(3) A supplemental opt-out right will be provided to those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022, as set out in the First Order.

(4) The Plaintiff, through Class Counsel, expressly waived his right to opt out of the Action.

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

(1) The Plaintiff and the Defendant shall, in their respective discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so (“**Termination Notice**”) to the other Party hereto within thirty (30) days of the date on which:

- (a) the Court declines to dismiss the Action against the Defendant;
- (b) the Court declines to approve this Settlement Agreement or any material part hereof;
- (c) the Court approves this Settlement Agreement in a materially modified form;
- (d) the Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as **Schedule B**, and such order becomes a Final Order; or
- (e) the Dismiss Order is reversed on appeal and the reversal becomes a Final Order.

(2) Except as provided for in Section 6.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by the Court with respect to the Distribution Order, Class Counsel Fees or Class Counsel Disbursements, or the Distribution Protocol, shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to approve this Settlement Agreement, which has not been decided, shall proceed; and
- (b) any order approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise.

6.3 Return of Settlement Amount Following Termination

(1) If the Settlement Agreement is terminated, Class Counsel, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, shall return to the Defendant the amount the Defendant has paid to Class Counsel, plus all accrued interest thereon and less any costs incurred with respect to the notices required by Section 2.2(3), and any costs of translation required by Section 14.12, such costs in total not to exceed one hundred and fifty thousand Canadian dollars (CAD \$150,000).

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(2), 3.2(3), 6.1, 6.2, 6.3, 6.4, 9.1 and 9.2 (the “**Surviving Provisions**”), and the recitals, definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The recitals, definitions and Schedules shall survive only for the limited purpose of the interpretation of the Surviving Provisions within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

(1) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against the Defendant; and (ii) any and all Released Claims as against all Releasees.

(2) Upon the Effective Date, subject to Section 7.2, each of the Releasers: (i) shall be deemed to have, and by operation of the Dismiss Order, shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have against the Releasees, regardless of whether such Releaser executes and delivers a proof of claim and release form; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Releasees; and (iii) agrees and covenants not to sue any of the Releasees on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Releasee related in any way to any Released Claims.

7.2 Covenant Not To Sue

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

(1) Upon the Effective Date, the Releasers shall not then or thereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this Section 7.3(1) does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions. For greater certainty and without limiting the generality of the foregoing,

the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

7.4 Dismissal of the Action

(1) Upon the Effective Date, the Action shall be dismissed with prejudice and without costs as against the Defendant.

7.5 Releases a Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8 – CLAIMS AGAINST OTHER ENTITIES

8.1 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any Person other than the Releasees.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

(1) The Plaintiff and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees or any one of them, or of the truth of any of the claims or allegations contained in the Action, or any other pleading filed by the Plaintiff.

9.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

9.3 No Further Litigation

(1) Neither Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court. For the avoidance of doubt, this Section 9.3(1) does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Appointment of the Administrator

(1) By order of the Court, the Administrator will be appointed to serve until such time as the Net Settlement Amount is distributed in accordance with this Settlement Agreement and the Distribution Protocol, on the terms and conditions and with the powers, rights, duties and responsibilities set out in this Settlement Agreement and in the Distribution Protocol.

10.2 Information and Assistance from the Defendant

(1) By order of the Court in the Distribution Order, the Defendant will deliver, or will cause to be delivered, to Class Counsel an electronic copy of the account-level or customer-level data

that the Defendant prepared for the purposes of mediation in the Action, along with the name, email address and mailing address corresponding to each account or customer identified in that data. Class Counsel shall provide this data to the Administrator upon its appointment by the Court to be used only for the purpose of Section 10.2(2).

(2) Class Counsel and the Administrator may use the information obtained under Section 10.2(1) for the purpose of administering and implementing this Settlement Agreement, the Plan of Notice and the Distribution Protocol, but Class Counsel and the Administrator shall otherwise keep confidential the information obtained under Section 10.2(1).

(3) For greater certainty, any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Settlement Agreement and the Distribution Protocol.

10.3 No Responsibility for Administration or Fees

(1) The Defendant shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account, including, but not limited to, Administration Expenses, Class Counsel Fees and Class Counsel Expenses.

SECTION 11 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATION EXPENSES

11.1 Class Counsel Fees, Class Counsel Disbursements and Administration Expenses

(1) The Defendant shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiff's or Class Members' respective lawyers, experts, advisors, agents, or representatives.

(2) Class Counsel shall pay the costs of the notices required by Sections 2.2(3) and 2.3(6) and any costs of translation required by Section 14.12 from the Trust Account, as they become due. The Releasees shall not have any responsibility for the costs of the notices or translation.

(3) Class Counsel may seek the Court's approval to pay Class Counsel Fees and Class Counsel Disbursements contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Fees and Class Counsel Disbursements shall be reimbursed and paid solely out of the Trust Account after the Effective Date. No Class Counsel Fees or Class Counsel Disbursements shall be paid from the Trust Account prior to the Effective Date.

(4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(5) The Defendant shall not be liable for any fees, disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members, or any lien of any Person on any payment to any Class Member from the Settlement Amount.

SECTION 12 – FUNDING AND HONORARIUM

12.1 Funding and Honorarium

(1) Immediately following the motion for the Dismiss Order and the Distribution Order, Class Counsel may seek orders from the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.

(2) Class Counsel are not precluded from making additional motions to the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.

(3) The Defendant acknowledges that it is not party to any motion concerning the payment of the Funding Commission or the payment of an honorarium to the Plaintiff, it will have no involvement in any such motion, and it will not take any position or make any submissions to the Court concerning any such motion, except as requested and required by the Court.

(4) Any order or proceeding relating to payment of the Funding Commission or the payment of an honorarium to the Plaintiff, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or affect or delay the Effective Date and the settlement of this Action provided herein.

12.2 Release of the Funder's Security

- (1) After the Effective Date, the Parties shall cooperate in taking all reasonably required steps to secure the prompt payment out of Court to the Funder of the Funder's Security.

SECTION 13 – SUBSEQUENT SETTLEMENTS OF OTHER 2018 ACTIONS

13.1 Definitions

- (1) For the purposes of sections 13.1 and 13.2 hereof:
 - (a) **“Material Adverse Litigation Event”** means an event that has a material adverse effect on the quantum of potential recovery and/or overall likelihood of success against the defendant(s) in the Other 2018 Action in which there is a Subsequent Settlement and meets the following criteria. This event would only occur if there is a decision of a Court in any of the Other 2018 Actions (**“Adverse Decision”**) or a change in the financial circumstances of the defendant(s) in the applicable Other 2018 Action that would cause Class Counsel, acting reasonably and in good faith, to materially alter its assessment of its client's position in settlement negotiations with the defendant(s) and (a) has a material adverse effect upon the quantum of potential recovery and/or overall likelihood of success and/or enforcement against the defendant(s), or (b) has the effect of materially decreasing the valuation of the applicable Other 2018 Action. An **“Adverse Decision”** might include, but is not limited to, a judgment dismissing a motion for certification in the applicable Other 2018 Action, a judgment that materially reduces the size of the class relative to the class proposed in the applicable Other 2018 Action, a judgment that materially reduces the class period relative to the proposed class period in the applicable Other 2018 Action, and a judgment dismissing (in whole or in part) the applicable Other 2018 Action.
 - (b) **“Subsequent Settlement”** means any settlement of any of the Other 2018 Actions; and
 - (c) **“Subsequent Settlement Amount”** means the amount that the defendant(s) in any of the Other 2018 Actions agrees to pay pursuant to a Subsequent Settlement.

13.2 Obligations in the Event of a Subsequent Settlement

(1) Class Counsel acknowledges its professional obligations and that it intends to maximize the recovery of damages alleged in the Other 2018 Actions. As such, Class Counsel will endeavour to, acting reasonably and in good faith, negotiate terms in any Subsequent Settlement that are at least as favourable to the class members in the Other 2018 Actions than the settlement in this Settlement Agreement.

(2) As soon as and in the event that such disclosure is permitted pursuant to the terms of a Subsequent Settlement, Class Counsel shall advise the Defendant in writing of the Subsequent Settlement and the Subsequent Settlement Amount. Class Counsel shall also advise the Defendant in writing whether in Class Counsel's opinion, acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the Other 2018 Action than the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the following factors:

- (a) the Subsequent Settlement Amount, compared to the Settlement Amount under this Settlement Agreement;
- (b) the percentage equal to the Subsequent Settlement Amount as a percentage of Class Counsel's estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the defendant(s) in the applicable Other 2018 Action, compared to the percentage equal to the Settlement Amount as a percentage of Class Counsel's estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the Defendant;
- (c) differences in the facts of the applicable Other 2018 Action and this Action that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action;
- (d) whether in Class Counsel's opinion, acting reasonably and in good faith, a Material Adverse Litigation Event has occurred; and

- (e) any other factor that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action.
- (3) The Defendant acknowledges and understands that the quantification of the trailing commissions paid to Discount Brokers by the Defendant or the defendant(s) in the applicable Other 2018 Action under Section 13.2(2)(b) may not be able to be precisely and accurately determined because of, among other things, incomplete or insufficient data. In such circumstances, Class Counsel's estimate, acting reasonably, in good faith and relying on expert evidence, of the amount of the trailing commissions paid to Discount Brokers shall be accepted by the Defendant as a reasonable estimation of the trailing commissions for the purposes of sections 13.1 and 13.2.
- (4) In advising the Defendant under Section 13.2(2), Class Counsel, acting reasonably and in good faith, shall provide the Defendant with a written summary of the factors considered by Class Counsel under Sections 13.2(2)(a) to 13.2(2)(e), subject to any legal privilege owed to its client(s) in the applicable Other 2018 Action or confidentiality obligations to the defendant(s) in the applicable Other 2018 Action.
- (5) On the motion for Court approval of a Subsequent Settlement, Class Counsel shall include in the evidence filed in support of the motion a statement as to whether in Class Counsel's opinion, acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the applicable Other 2018 Action than the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the factors set out in Sections 13.2(2)(a) to 13.2(2)(e).
- (6) None of the provisions of this Section 13 shall be interpreted to impose any obligation on Class Counsel to (i) disclose any information which it would not otherwise be legally permitted to disclose in the course of seeking approval of a Subsequent Settlement, (ii) waive any settlement, litigation, solicitor-client or other privilege absent the requisite permission or instructions to do so, or (iii) do anything in the Other 2018 Actions other than comply with its professional obligations and seek to maximize the recovery of damages alleged in those proceedings.

(7) Other than what is expressly provided in this section, this section and this Settlement Agreement confer no rights of standing to the Defendant in respect of the Other 2018 Actions.

SECTION 14 – MISCELLANEOUS

14.1 Motions for Directions

(1) Class Counsel or the Defendant may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

14.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

14.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

14.4 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and

including the day on which the second event happens, including all calendar days;
and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

(1) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, the Parties and the Class Members to interpret and enforce the terms, conditions and obligations under this Settlement Agreement, the First Order, the Dismiss Order and the Distribution Order.

14.6 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

14.7 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

14.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all of the Parties, and any such modification or amendment must be approved by the Court.

14.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendant, the Releasers, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasers and each and every covenant and agreement made by the Defendant shall be binding upon all of the Releasees.

14.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

14.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

14.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais*. Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

14.13 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

14.14 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

14.15 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

14.16 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

14.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

Anthony O'Brien
Siskinds LLP
65 Queen Street West, Suite 1155
Toronto, ON M5H 2M5
Tel: 416-594-4394
Fax: 519-672-6065
Email: anthony.obrien@siskinds.com

For the Defendant:

Shane D'Souza
McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Tel: 416-601-8196
Fax: 416-868-0673
Email: sdsouza@mccarthy.ca

14.18 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

PETER WESTWOOD on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:

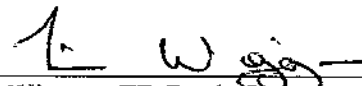
Siskinds LLP

TD ASSET MANAGEMENT INC.:

Name of Authorized Signatory:

Tim WIGGAN

Signature of Authorized Signatory:


Tim Wiggan, TD Bank Group

PETER WESTWOOD on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory: Anthony O'Brien

Signature of Authorized Signatory:  Signed by:
Anthony O'Brien
866D01A5EEE14CD
Siskinds LLP

TD ASSET MANAGEMENT INC.:

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Tim Wiggan, TD Bank Group

SCHEDULE A
FIRST ORDER

- 2 -

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, amending the class definition in the Action, approving the notices of settlement approval hearing and the method of dissemination of the notices, and setting a supplemental opt-out process and deadline, was heard on *[insert]* at *[insert]*.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated *[insert]* attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the Defendant consents to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the class definition set out in paragraph 3 of the certification Order of the Honourable Justice Belobaba dated February 27, 2020 is amended, for settlement purposes, to the following (“**Class**” or “**Class Member**”):

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.

“Excluded Persons” means: (a) the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Belobaba dated December 14, 2021 providing for certification notice and an opt-out process; or (c) any Person who would otherwise be a Class Member and who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 but who validly excludes themselves from the Action in accordance with this Order.

5. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval hearing (“**First Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.

6. **THIS COURT ORDERS** that the plan of dissemination for the First Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the First Notice shall be disseminated in accordance with the Plan of Notice.
7. **THIS COURT ORDERS** that those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (“**Eligible Supplemental Opt-Out Party**” or “**Eligible Supplemental Opt-Out Parties**”) may opt out of this action in accordance with this Order.
8. **THIS COURT ORDERS** that the supplemental opt-out form (“**Supplemental Opt-Out Form**”), substantially in the form attached as Appendix “A” to the long-form First Notice, is hereby approved.
9. **THIS COURT ORDERS** that the deadline for Eligible Supplemental Opt-Out Parties to opt out of the action (“**Supplemental Opt-Out Deadline**”) is the date that is sixty (60) days after the day on which the First Notice is first published.
10. **THIS COURT ORDERS** that any Eligible Supplemental Opt-Out Party who opts out of this class proceeding by the Supplemental Opt-Out Deadline, by complying with the instructions set out in the long-form First Notice and fully completing a Supplemental Opt-Out Form, shall not be a Class Member on and after the date that such person opts out of the class proceeding.
11. **THIS COURT ORDERS** that, subject only to the opt-out right provided to Eligible Supplemental Opt-Out Parties in accordance with paragraphs 7 to 10 of this Order, the period for Class Members to opt out of this action expired as of April 8, 2022.
12. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection to, or comment on, the settlement, the Distribution Protocol or the request for approval of

- 5 -

Class Counsel Fees and Class Counsel Disbursements shall deliver a written statement to Class Counsel, at the address indicated in the First Notice, no later than 21 calendar days prior to the hearing of the settlement approval motion.

The Honourable Justice Akbarali

SCHEDULE B
DISMISS ORDER

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the settlement between the Plaintiff and the Defendant and dismissing this action as against the Defendant, was heard on [insert] at [insert].

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated [insert] attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been [insert] written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Defendant consents to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
5. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
6. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
7. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 8, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

9. **THIS COURT ORDERS** that, upon the Effective Date, each Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors, covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
10. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions.
11. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
12. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement or with respect to the Distribution Protocol, including administration, investment, or distribution of the Trust Account.

13. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed as against the Defendant, without costs and with prejudice.

The Honourable Justice Akbarali

SCHEDULE C
DISTRIBUTION ORDER

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the notices of settlement approval and the method of dissemination of the notices, approving the Distribution Protocol, and approving the claims process, was heard on [insert] at [insert].

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated [insert] attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Distribution Protocol has passed and there have been [insert] written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Defendant does not oppose this Order;

AND ON BEING ADVISED that [*insert*] consents to being appointed as the Administrator;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval (“**Second Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.
5. **THIS COURT ORDERS** that the plan of dissemination for the Second Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the Second Notice shall be disseminated in accordance with the Plan of Notice.
6. **THIS COURT ORDERS** that the Distribution Protocol, substantially in the form attached hereto as **Schedule 6**, is approved for the purposes of distributing the Net Settlement Amount.
7. **THIS COURT ORDERS** that the form and content of the claim form (“**Claim Form**”), substantially in the form attached hereto as **Schedule 7**, is approved.
8. **THIS COURT ORDERS** that [*insert*] is appointed as the Administrator.

9. **THIS COURT ORDERS** that to be entitled to participate in a distribution from the Net Settlement Amount, a Class Member must:
- (a) submit a properly completed Claim Form to the Administrator, using the online claim portal established by the Administrator or by submitting a paper Claim Form by mail or courier to the Administrator, postmarked or received by the Administrator on or before 11:59pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which any part of Part 2 of the Plan of Notice is first completed (“**Claims Bar Deadline**”);
 - (b) submit, together with the Claim Form, any supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Administrator; and
 - (c) otherwise comply with the instructions set out in the Claim Form.
10. **THIS COURT ORDERS** that the Defendant shall forthwith deliver, or cause to be delivered, to Class Counsel the data required under section 10.2(1) of the Settlement Agreement.

The Honourable Justice Akbarali

SCHEDULE D
PLAN OF NOTICE

PLAN OF NOTICE

Unless otherwise modified herein, the definitions set out in the Settlement Agreement dated August [insert], 2024 apply.

Part 1: First Notice will be disseminated (or caused to be disseminated) by Class Counsel as follows:

1. Short-form notice (substantially in the form attached as **Schedule E** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule F** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule G** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, no less than 30 days and no more than 35 days; and

- (b) published as a 12-day sponsored news link on Stockhouse.

Part 2: Second Notice will be disseminated by Class Counsel and the Administrator as follows:

1. Short-form notice (substantially in the form attached as **Schedule H** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule I** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule J** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days; and
 - (b) published as a 12-day sponsored news link on Stockhouse.

SCHEDULE E
SHORT-FORM FIRST NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Proposed Settlement and Supplemental Opt-Out Deadline for Certain Class Members

Have you held units of a TD mutual fund through a discount broker?

A class action settlement has been reached with TD Asset Management Inc. for C\$70.25 million to resolve the claims asserted on behalf of all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD mutual fund trust through a discount broker (“Class”).

The settlement is subject to approval by the Ontario Superior Court of Justice. A settlement approval hearing has been set for *[insert]*. At that same hearing, the Court will also consider a motion to approve Class Counsel’s fees, which will not exceed *[insert]*, plus reimbursement for expenses incurred by Class Counsel in the litigation, plus taxes on the fees and disbursements.

If you wish to object to the settlement, Class Counsel’s fees and disbursements, or the Distribution Protocol that sets out the manner in which the net settlement funds will be distributed among eligible Class Members, you must do so by *[insert]*.

If you are a Class Member who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (meaning you never held units of a TD Mutual Fund through a Discount Broker on or before April 9, 2022), and you do not want to be part of the class action and be bound by the terms of the settlement, you must opt out by submitting a supplemental opt-out form by *[insert opt-out deadline]*.

For other Class Members (meaning you held units of a TD Mutual Fund through a Discount Broker on or before April 8, 2022, regardless of whether you continued to hold those units after April 8, 2022), your opt-out period expired on April 8, 2022 and there is no further right to opt out of the class action.

For important information regarding the class action, to determine if you are a member of the Class, to obtain a copy of the supplemental opt-out form, to object, and to understand your legal rights:

- View the long-form notice at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>
- Call Class Counsel at *[insert]* or toll-free *[insert]*

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a

discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit [*insert relevant website*] for more information about that settlement.

The publication of this notice was authorized by the Superior Court of Justice of the Province of Ontario

SCHEDULE F
LONG-FORM FIRST NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Proposed Settlement and Supplemental Opt-Out Deadline

Read this notice carefully as it may affect your legal rights

THIS NOTICE IS TO:

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a discount broker, except for the Excluded Persons (“**Class**” and “**Class Members**”).

In the above class definition:

“**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“**Defendant**”) is trustee or was trustee at any time on or prior to *[insert Date of Execution]* (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

“**Excluded Persons**” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who validly opted or opts out of the class action.

Examples of discount brokers are BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, TD Direct Investing, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

A settlement (“**Settlement**”) has been reached in the class action in the Ontario Superior Court of Justice against the Defendant (“**Action**”). This notice contains important details about the Settlement.

IMPORTANT DEADLINES

Objection Deadline (to object to the Settlement, Class Counsel’s fee request or the Distribution Protocol): *[insert]*

Supplemental Opt-Out Deadline (for those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 to exclude themselves from the Action and the settlement): *[insert]*

IMPORTANT NOTE ABOUT SEPARATE SETTLEMENT FOR NON-DISCOUNT BROKER HOLDERS OF TD MUTUAL FUNDS

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to discount brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to discount brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments.

The Defendant has denied these allegations and continues to deny all allegations.

On behalf of the Class, the Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

THE CERTIFICATION ORDER

By Orders dated February 27, 2020 and February 5, 2021, the Ontario Superior Court of Justice (“**Court**”) certified the Action as a class proceeding under the Ontario *Class Proceedings Act, 1992*. The Court appointed the plaintiff, Peter Westwood, as the representative plaintiff for the Class (“**Plaintiff**”).

By Order dated [insert], the class definition was amended to the definition noted above.

THE SETTLEMENT

On [insert], the Plaintiff and the Defendant executed a Settlement Agreement (“**Settlement Agreement**”), which is subject to approval by the Court. The Settlement Agreement provides for the payment of C\$70,250,000 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members.

The Settlement Agreement provides that if approved by the Court, the claims of Class Members asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed.

The Settlement Agreement is not an admission of liability, wrongdoing, or fault on the part of the Defendant, which has denied, and continues to deny, the allegations against it.

SETTLEMENT APPROVAL HEARING

The Settlement Agreement is conditional on approval by the Court. The Settlement Agreement will be approved if the Court determines that it is fair and reasonable and in the best interests of the Class Members to approve it.

The Court will hear a motion for approval of the Settlement on [insert] at [insert].

CLASS COUNSEL’S FEES AND OTHER EXPENSES

The Plaintiff and the Class are represented by Siskinds LLP (“**Class Counsel**”). Class Counsel are conducting the Action on a contingent fee basis. On [insert], Class Counsel will make a motion to the Court for approval of their fees and the fees of Bates Barristers P.C., which in the aggregate will not exceed [insert], plus reimbursement for expenses incurred in the litigation in the maximum amount of [insert], plus applicable taxes on the fees and expenses.

A funding agreement between the Plaintiff and Claims Funding International, PLC (“**Funder**”) was previously approved by the Court on June 20, 2019. Amounts owing to the Funder will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

On *[insert]*, Class Counsel will also seek the Court’s approval for the payment of an honorarium to the Plaintiff in the maximum amount of *[insert]*. Class Counsel will be requesting that the honorarium be deducted directly from the Settlement Amount.

The fees of the claims administrator, together with any other costs relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”), will also be paid from the Settlement Amount.

CLASS MEMBERS’ ENTITLEMENT TO COMPENSATION

If the Settlement Agreement is approved by the Court, the Settlement Amount, after deduction of Class Counsel’s fees and expenses, amounts payable to the Funder, any approved honorarium for the Plaintiff and Administration Expenses (“**Net Settlement Amount**”) will be distributed to Class Members who file valid and timely claims in accordance with the Distribution Protocol.

On *[insert]*, the Plaintiff will seek the Court’s approval of the Distribution Protocol and a process by which Class Members can claim compensation from the Net Settlement Amount.

The proposed Distribution Protocol will provide that in order to determine the individual entitlements of Class Members who make claims, the losses of each claimant will be calculated in accordance with the Distribution Protocol. Once the notional losses of all Class Members who have filed valid claims have been calculated, the Net Settlement Amount will be allocated to those Class Members in proportion to their percentage of the total notional losses calculated for all valid claims filed. Because the Net Settlement Amount will be distributed *pro rata*, it is not possible to estimate the individual recovery of any individual Class Member until all the claims have been received and reviewed.

The approval of the Settlement Agreement is not contingent on the approval of the Distribution Protocol. The Court may still approve the Settlement Agreement even if it does not approve the Distribution Protocol or approves amendments to the Distribution Protocol.

PARTICIPATION IN THE APPROVAL MOTION

The following material will be posted on Class Counsel’s website dedicated to the Action (<https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>) on or before the dates set out below:

1. the Settlement Agreement (posted prior to or at the time of the publication of this notice);
2. the proposed Distribution Protocol (posted by *[6 weeks prior to settlement approval hearing]*); and
3. a summary of the basis upon which Class Counsel recommends the Settlement and Distribution Protocol (posted by *[6 weeks prior to settlement approval hearing]*).

Class Members who wish to comment on, or make an objection to, the approval of the Settlement Agreement, the Distribution Protocol or the fees and disbursements of Class Counsel shall deliver (by email, mail or courier) a written submission to Class Counsel, to be postmarked or received no later than *[insert]*, at the following email address or mailing address:

Zohra Bhimani
 Siskinds LLP
 275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
 Tel: 226-330-0409
 Email: zohra.bhimani@siskinds.com

Any objections delivered by that date will be filed with the Court.

Class Members may attend at the hearing whether or not they deliver an objection. Class Members who wish to have a lawyer speak on their behalf at the hearing may retain one to do so at their own expense.

SUPPLEMENTAL OPT-OUT RIGHT FOR CERTAIN CLASS MEMBERS

If you are a Class Member who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (meaning you never held units of a TD Mutual Fund through a Discount Broker on or before April 9, 2022), and you do not want to be bound by the outcome of the Action, including the terms of the Settlement if approved, you must “opt out”, meaning that you must exclude yourself from the Action in accordance with the following procedure.

Such class Members who do not opt out will (i) be entitled to participate in the Settlement; (ii) be bound by the terms of the Settlement; and (iii) not be permitted to bring other legal proceedings in relation to the matters alleged in the Action against the Defendant, or any person released by the approved Settlement. Conversely, if you opt out of the Action, you will not be able to make a claim to receive compensation from the Settlement Amount but will maintain the right to pursue your own claim against the Defendant relating to the matters alleged in the Action.

If you wish to opt out of the Action, you must complete, sign and return (by email, mail or courier) the supplemental opt-out form provided at Appendix “A” hereto to Class Counsel.

In order for your opt-out to be valid, your complete and signed supplemental opt-out form must be postmarked or received by Class Counsel by no later than **[insert]**.

For other Class Members (meaning you held units of a TD Mutual Fund through a Discount Broker on or before April 8, 2022, regardless of whether you continued to hold those units after April 8, 2022), your opt-out period expired on April 8, 2022 and there is no further right to opt out of the Action.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information in both languages are available on Class Counsel’s website at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>.

Questions relating to the Action may be directed to Class Counsel using the contact details above.

Si vous avez besoin d’aide en français, veuillez contacter les avocats du groupe en utilisant les coordonnées ci-dessus et nous dirigerons votre demande vers une personne appropriée.

The publication of this notice was authorized by the Ontario Superior Court of Justice

(PLEASE CIRCLE THE APPROPRIATE LANGUAGE)

I believe that **I am / the organization that I represent is** a member of the Class in the Action.

I believe that **I am not / the organization that I represent is not** amongst the persons and entities excluded from the Action.

I understand that by opting out of the Action, **I will not be eligible / the organization that I represent will not be eligible** for any benefit that may be available to the Class upon resolution of this matter, if and when such resolution may occur.

I, _____ (print your full name), **OPT OUT FROM THE ACTION** and wish to be excluded from this class action.

I wish to opt out from this class action for the following reason(s) (*optional*):

I, _____ (print your full name), **CERTIFY** that the information provided herein is complete and true.

Date

Signature

In order to validly opt out, you must complete and send this Supplemental Opt-Out Form by no later than [DATE] to:

Zohra Bhimani
Siskinds LLP
275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
Email: zohra.bhimani@siskinds.com

SCHEDULE G
INTERNET BANNER FIRST NOTICE

DRAFT TEXT (subject to design)

Have you held units of a TD mutual fund
through a discount broker?

You may be affected by a proposed class
action settlement.

Click to learn your legal rights.

[Link to <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>]

SCHEDULE H
SHORT-FORM SECOND NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Have you held units of a TD mutual fund through a discount broker?

The Ontario Superior Court of Justice approved a class action settlement with TD Asset Management Inc. for C\$70.25 million to resolve the claims asserted on behalf of all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD mutual fund trust through a discount broker ("Class").

This settlement is not an admission of liability or wrongdoing by the Defendant. It is an efficient compromise between the parties of their disputed positions.

To be eligible to obtain compensation from the settlement, Class Members must submit a Claim Form to the Administrator at *[insert Administrator website]* by *[insert]*.

For important information regarding the class action, to determine if you are a member of the Class, and to learn how to make a claim for compensation:

- View the long-form notice at *[insert Administrator website]*
- Contact the Administrator at:

[insert Administrator contact details]

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

The publication of this notice was authorized by the Superior Court of Justice of the Province of Ontario

SCHEDULE I
LONG-FORM SECOND NOTICE

DRAFT TEXT (subject to design)

[NTD: The language of the notice regarding claims for compensation is subject to settling the terms of the proposed Distribution Protocol, as the notice language will need to line up with the terms of the proposed Distribution Protocol.]

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Read this notice carefully as it may affect your legal rights

THIS NOTICE IS TO:

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a discount broker, except for the Excluded Persons (“**Class**” and “**Class Members**”).

In the above class definition:

“**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“**Defendant**”) is trustee or was trustee at any time on or prior to *[insert Date of Execution]* (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

“**Excluded Persons**” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who previously opted out of the class action.

Examples of discount brokers are BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, TD Direct Investing, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

A settlement (“**Settlement**”) has been reached in the class action against the Defendant (“**Action**”). The Ontario Superior Court of Justice (“**Court**”) has approved the Settlement. This notice contains important details about the Settlement and how to submit a claim for compensation from the Settlement.

IMPORTANT DEADLINE TO FILE CLAIM FOR COMPENSATION

Claims Bar Deadline (to file a claim for compensation): *[insert]*

IMPORTANT NOTE ABOUT SEPARATE SETTLEMENT FOR NON-DISCOUNT BROKER HOLDERS OF TD MUTUAL FUNDS

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to discount brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to discount brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments.

The Defendant has denied these allegations and continues to deny all allegations.

On behalf of the Class, the Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

SETTLEMENT APPROVAL, FEE APPROVAL AND OTHER MATTERS

On *[insert]*, the Court approved the Settlement. The Settlement provides for the payment of C\$70,250,000 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members.

The Settlement Agreement provides that the claims of Class Members (who did not opt out) asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed.

The Settlement Agreement is not an admission of liability, wrongdoing or fault on the part of the Defendant, which has denied, and continues to deny, the allegations against it.

The Court awarded Siskinds LLP (“**Class Counsel**”) and Bates Barristers P.C. total legal fees in the amount of *[insert]*, plus disbursements of *[insert]*, plus applicable taxes on the fees and expenses. As is customary in such cases, Class Counsel conducted the class action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. The approved fees and disbursements will be deducted from the Settlement Amount before it is distributed to Class Members.

A funding agreement between the Plaintiff and Claims Funding International, PLC (“**Funder**”) was previously approved by the Court on June 20, 2019. Amounts owing to the Funder will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

The Court also approved the payment of an honorarium to the Plaintiff in the amount of *[insert]*. The honorarium will be deducted from the Settlement Amount before it is distributed to Class Members.

Expenses incurred or payable relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”) will also be paid from the Settlement Amount before it is distributed to Class Members.

The Settlement Amount includes all legal fees, the Funder’s commission, taxes and administrative expenses.

CLAIMS ADMINISTRATOR

The Court has appointed *[insert]* as the claims administrator for the Settlement (“**Administrator**”). The Administrator will, among other things: (i) receive and process claims for compensation from the Settlement; (ii) determine Class Members’ eligibility for and entitlement to compensation pursuant to the Distribution Protocol; (iii) communicate with Class Members regarding claims for compensation; and (iv) manage and distribute the Settlement Amount in accordance with the Settlement Agreement and the orders of the Court.

The Administrator can be contacted at:

[insert Administrator full contact details]

CLASS MEMBERS' ENTITLEMENT TO COMPENSATION

The Settlement Amount, after deduction of Class Counsel's fees and expenses, amounts payable to the Funder, the approved honorarium for the Plaintiff and Administration Expenses ("**Net Settlement Amount**") will be distributed to Class Members in accordance with the Distribution Protocol approved by the Court.

Class Members will be eligible for compensation if they submit a completed Claim Form, including any supporting documentation, with the Administrator, and their claim satisfies the criteria set out in the Distribution Protocol.

To be eligible for compensation, Class Members must submit their Claim Form **no later than [insert]** ("**Claims Bar Deadline**").

The most efficient way to file a claim is to visit the Administrator's website at [insert] and file an online claim. The website provides step by step instructions on how to file a claim. In order to verify claims, the Administrator will require supporting documentation, including brokerage statements or confirmations evidencing the claimed transactions. Accordingly, Class Members should visit the Administrator's site as soon as possible so that they have time to obtain the required documentation prior to the Claims Bar Deadline.

While online claims are recommended and preferred, the Administrator will also accept Claim Forms filed by mail or courier. To obtain a copy of the Claim Form, Class Members may contact the Administrator to have one sent by email or regular mail. Claim Forms sent by mail or courier should be sent to the Administrator using the contact details above.

If you have questions about how to complete or file a Claim Form, the documentation required to support a claim, or whether you are a Class Member, please contact the Administrator.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information in both languages are available on the Administrator's website at [insert].

Questions relating to the Action may be directed to the Administrator using the contact details above or Class Counsel:

Zohra Bhimani
Siskinds LLP
275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
Tel: 226-330-0409
Email: zohra.bhimani@siskinds.com

Si vous avez besoin d'aide en français, veuillez contacter les avocats du groupe en utilisant les coordonnées ci-dessus et nous dirigerons votre demande vers une personne appropriée.

The publication of this notice was authorized by the Ontario Superior Court of Justice

SCHEDULE J
INTERNET BANNER SECOND NOTICE

DRAFT TEXT (subject to design)

Have you held units of a TD mutual fund
through a discount broker?

You may be eligible to obtain compensation
from a class action settlement.

Click to learn your legal rights.

[Link to Administrator website]

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(DISMISS ORDER)**

Siskinds LLP

Barristers & Solicitors
275 Dundas Street, Unit 1
P.O. Box 2520
London, ON N6B 3L1

Michael G. Robb (LSO#: 45787G)
Garett Hunter (LSO#: 71800D)
Gigi Pao (LSO#: 80151M)
Tel: 519.660.2121
Fax: 519.672.6065

65 Queen Street West, Suite 1155
Toronto, ON M5H 2M53

Anthony O'Brien (LSO#: 56129U)
Tel: 416.594.4394
Fax: 416.362.2610

Lawyers for the Plaintiff

SCHEDULE “B”

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(DISTRIBUTION ORDER)**

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the notices of settlement approval and the method of dissemination of the notices, approving the Distribution Protocol, and approving the claims process, was heard on December 9, 2024 at 10:00am.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated September 11, 2024 attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Distribution Protocol has passed and there have been no written objections to the Distribution Protocol;

AND ON BEING ADVISED that the Defendant does not oppose this Order;

AND ON BEING ADVISED that Ricepoint Administration Inc. doing business as Verita Global (“Verita”) consents to being appointed as the Administrator;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval (“**Second Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.
5. **THIS COURT ORDERS** that the plan of dissemination for the Second Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the Second Notice shall be disseminated in accordance with the Plan of Notice.
6. **THIS COURT ORDERS** that the Distribution Protocol, substantially in the form attached hereto as **Schedule 6**, is approved for the purposes of distributing the Net Settlement Amount.
7. **THIS COURT ORDERS** that the form and content of the claim form (“**Claim Form**”), substantially in the form attached hereto as **Schedule 7**, is approved.

8. **THIS COURT ORDERS** that Verita is appointed as the Administrator.
9. **THIS COURT ORDERS** that to be entitled to participate in a distribution from the Net Settlement Amount, a Class Member must:
 - (a) submit a properly completed Claim Form to the Administrator, using the online claim portal established by the Administrator or by submitting a paper Claim Form by mail or courier to the Administrator, postmarked or received by the Administrator on or before 11:59 pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which any part of Part 2 of the Plan of Notice is first completed (“**Claims Bar Deadline**”);
 - (b) submit, together with the Claim Form, any supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Administrator; and
 - (c) otherwise comply with the instructions set out in the Claim Form.
10. **THIS COURT ORDERS** that the Defendant shall forthwith deliver, or cause to be delivered, to Class Counsel the data under section 10.2(1) of the Settlement Agreement.

The Honourable Justice Akbarali

SCHEDULE "1"
Settlement Agreement dated
September 11, 2024

SETTLEMENT AGREEMENT

Made as of September 11, 2024

Between

PETER WESTWOOD

(“Plaintiff”)

and

TD ASSET MANAGEMENT INC.

(“Defendant”)

SETTLEMENT AGREEMENT

TABLE OF CONTENTS

RECITALS	1
SECTION 1 - DEFINITIONS.....	3
SECTION 2 – APPROVAL AND NOTICE PROCESS	10
2.1 Commercially Reasonable Efforts	10
2.2 Motion for First Order	10
2.3 Motion for Dismiss Order and Distribution Order	10
2.4 Pre-Motion Confidentiality	11
SECTION 3 – SETTLEMENT BENEFITS	11
3.1 Payment of Settlement Amount	11
3.2 Taxes and Interest	12
SECTION 4 – NO REVERSION.....	13
4.1 No Reversion	13
SECTION 5 – OPTING-OUT.....	13
5.1 Opt-Outs.....	13
SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT.....	14
6.1 Right of Termination.....	14
6.2 If Settlement Agreement is Terminated.....	15
6.3 Return of Settlement Amount Following Termination.....	15
6.4 Survival of Provisions After Termination.....	15
SECTION 7 – RELEASES AND DISMISSALS.....	16
7.1 Release of Releasees	16
7.2 Covenant Not To Sue.....	16
7.3 No Further Claims.....	16
7.4 Dismissal of the Action.....	17
7.5 Releases a Material Term.....	17
SECTION 8 – CLAIMS AGAINST OTHER ENTITIES.....	17
8.1 Claims Against Other Entities Reserved.....	17
SECTION 9 – EFFECT OF SETTLEMENT.....	17
9.1 No Admission of Liability	17
9.2 Agreement Not Evidence	18
9.3 No Further Litigation	18

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION	18
10.1 Appointment of the Administrator.....	18
10.2 Information and Assistance from the Defendant	18
10.3 No Responsibility for Administration or Fees	19
SECTION 11 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATION EXPENSES	19
11.1 Class Counsel Fees, Class Counsel Disbursements and Administration Expenses 19	
SECTION 12 – FUNDING AND HONORARIUM.....	20
12.1 Funding and Honorarium.....	20
12.2 Release of the Funder’s Security	21
SECTION 13 – SUBSEQUENT SETTLEMENTS OF OTHER 2018 ACTIONS.....	21
13.1 Definitions.....	21
13.2 Obligations in the Event of a Subsequent Settlement.....	22
SECTION 14 – MISCELLANEOUS	24
14.1 Motions for Directions.....	24
14.2 Releasees Have No Liability for Administration.....	24
14.3 Headings, etc.....	24
14.4 Computation of Time.....	24
14.5 Ongoing Jurisdiction.....	25
14.6 Governing Law	25
14.7 Entire Agreement.....	25
14.8 Amendments	25
14.9 Binding Effect.....	26
14.10 Counterparts.....	26
14.11 Negotiated Agreement	26
14.12 Language.....	26
14.13 Recitals.....	27
14.14 Schedules	27
14.15 Acknowledgements.....	27
14.16 Authorized Signatures.....	27
14.17 Notice.....	28
14.18 Date of Execution	28

RECITALS

A. WHEREAS the Action was commenced by the original plaintiff, Gary Stenzler, in Ontario on April 6, 2018;

B. WHEREAS the Plaintiff, Peter Westwood, was added as the plaintiff in the Action in substitution for Mr. Stenzler in accordance with the Order of the Honourable Justice Belobaba dated February 5, 2021;

C. WHEREAS Class Members were provided an opportunity to opt out of the Action, the deadline for Class Members to opt out of the Action expired on April 8, 2022, and there were no opt-outs from the Action;

D. WHEREAS the Action alleges, among other things, that the Defendant paid trailing commissions out of the assets of the TD Mutual Funds to Discount Brokers, and that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to Discount Brokers were excessive, inflated and/or unearned, and further that the Defendant made misrepresentations about the nature of the trailing commission payments;

E. WHEREAS the Defendant has denied and continues to deny each and all of the claims and allegations of wrongdoing made by the Plaintiff in the Action, including any and all allegations that the Plaintiff and/or the Class Members have suffered any harm or damage whatsoever, and all claims and allegations of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action, or otherwise;

F. WHEREAS the Plaintiff, Class Counsel and the Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Defendant;

G. WHEREAS the Plaintiff and Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defences thereto, and the applicable law, that: (1) it is in the best interests of the Class to enter into this Settlement Agreement in order to avoid the

uncertainties of litigation and to ensure that the benefits reflected herein, including the amount to be paid by the Defendant under this Settlement Agreement, are obtained for the Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the Class;

H. WHEREAS the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Class in the Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

I. WHEREAS counsel for the Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

J. WHEREAS as a result of these settlement discussions and negotiations, the Defendant and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendant and the Plaintiff, both individually and on behalf of the Class, subject to approval of the Court;

K. WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class;

L. WHEREAS the Parties therefore wish to and hereby finally resolve, without admission of liability, the Action against the Defendant;

M. WHEREAS the Parties intend to provide a supplemental opt-out right to those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled and dismissed with prejudice,

all without costs as to the Plaintiff, the Class or the Defendant, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

(1) **2022 Actions** means, collectively, *Aggarwal v TD Asset Management Inc.*, Ontario Superior Court of Justice, Court File No. CV-22-691344-00CP, *Ciardullo v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-684723-00CP, *Ciardullo et al. v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-685386-00CP, *Yeats v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-22-690373-00CP, *Woodard v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-22-690374-00CP, *Yeats v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-22-690519-00CP, *DeJong v. RBC Global Asset Management Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-691343-00CP, and *Aizic v. Natcan Trust Company et al.*, Ontario Superior Court of Justice, Court File No. CV-23-00697428-00CP.

(2) **Action** means *Westwood v TD Asset Management Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-595380-00CP.

(3) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

(4) **Administrator** means the third party professional firm and any employees of such firm, selected at arm's-length by Class Counsel, and appointed by the Court to facilitate dissemination of notices, receive and review claims and administer the Settlement Amount in accordance with the Distribution Protocol, and report to the Parties and the Court on the administration of the Settlement.

(5) **Adverse Decision** has the meaning given to such term in Section 13.1(1)(a).

- (6) **Class** means all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to the Date of Execution, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.
- (7) **Class Counsel** means Siskinds LLP.
- (8) **Class Counsel Disbursements** means the disbursements, administration expenses, and applicable taxes incurred by Class Counsel and Bates Barristers P.C. in the prosecution of the Action, as well as any adverse costs awards issued against the Plaintiff in the Action.
- (9) **Class Counsel Fees** means the fees of Class Counsel and Bates Barristers P.C., and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Class Members to any other body or Person.
- (10) **Class Member** means a member of the Class.
- (11) **Court** means the Ontario Superior Court of Justice.
- (12) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.
- (13) **Defendant** means TD Asset Management Inc.
- (14) **Defendant Claims** means claims, including Unknown Claims, that any Releasee may have against a Releasor or Class Counsel relating to the institution, prosecution, or settlement of the Action.
- (15) **Discount Broker Actions** means, collectively, *Frayce et al. v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-638868-00CP, *Frayce v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-634551-00CP, and *Michaud et al. v BBS Securities Inc. et al.*, Supreme Court of British Columbia, Court File No. VLC-S-1912710.
- (16) **Discount Brokers** means entities providing “order-execution only services” as defined in Rule 3200 of the IIROC Dealer Member Rules or entities performing a function similar to “order-execution only services” prior to the introduction of that definition in Rule 3200 of the IIROC

Dealer Member Rules, including (without limitation) TD Direct Investing, a division of TD Waterhouse Canada Inc., a subsidiary of The Toronto-Dominion Bank, or such other discount brokerage business operated by The Toronto-Dominion Bank from time to time.

(17) ***Dismiss Order*** has the meaning given to such term in Section 2.3(1).

(18) ***Distribution Order*** has the meaning given to such term in Section 2.3(1).

(19) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Court.

(20) ***Effective Date*** means the date on which the Dismiss Order has become a Final Order.

(21) ***Excluded Persons*** means:

- (a) the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund;
- (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Belobaba dated December 14, 2021 providing for certification notice and an opt-out process; or
- (c) any Person who would otherwise be a Class Member and who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 but who validly excludes themselves from the Action in accordance with the First Order.

(22) ***Final Order*** means an order of the Court from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or a notice of appeal.

- (23) **First Notice** means the short-form, long-form and internet banner notices of the pendency of the motion for the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule E**, **Schedule F** and **Schedule G** hereto or as fixed by the Court.
- (24) **First Order** has the meaning given to such term in Section 2.2(1).
- (25) **Funder** means Claims Funding International, PLC.
- (26) **Funder's Security** means the amounts paid into Court by the Funder as security for its obligations pursuant to the Funding Order.
- (27) **Funding Agreement** means the agreement entered into on March 29, 2019 between the original plaintiff in the Action, Gary Stenzler, and the Funder for the provision of, among other things, an indemnity against adverse costs in exchange for the payment of the Funding Commission and subsequently approved by the Court pursuant to the Funding Order.
- (28) **Funding Commission** means the amount to be paid to the Funder pursuant to the Funding Agreement.
- (29) **Funding Order** means the Order of the Honourable Justice Belobaba dated June 20, 2019 approving the Funding Agreement.
- (30) **Implementation Date** means the date on which both the Dismiss Order and the Distribution Order have become Final Orders.
- (31) **Material Adverse Litigation Event** has the meaning given to such term in Section 13.1(1)(a).
- (32) **Other 2018 Actions** means, collectively, *Sage v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-18-600380-00CP, *Gilani v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-611748-00CP, *Pozgaj v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-18-605345-00CP, *Pozgaj v. Mackenzie Financial Corporation et al.*, Ontario Superior Court of Justice, Court File No. CV-18-610311-00CP, *Pozgaj v. National Bank Investments Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-18-611745-00CP, and *Ross v. RBC Global*

Asset Management Inc. et al., Ontario Superior Court of Justice, Court File No. CV-18-611743-00CP.

(33) ***Net Settlement Amount*** means the amount available in the Trust Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, the Funding Commission and any other amounts approved by the Court.

(34) ***Parties*** means the Defendant, the Plaintiff and, where necessary, the Class Members.

(35) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(36) ***Plaintiff*** means Peter Westwood.

(37) ***Plan of Notice*** means the plan for disseminating the First Notice and the Second Notice to the Class substantially in the form attached as **Schedule D** hereto or as fixed by the Court.

(38) ***Released Claims*** mean any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, lawyers' fees, disgorgement, restitution and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several, and solidarily in the Province of Quebec), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Action, or any amended complaint or pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to any concerns relating to trailing commissions paid by the Defendant to Discount Brokers in respect of the TD Mutual Funds.

(39) **Releasees** means, jointly and severally, individually and collectively, the Defendant and each of its past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing; but excluding TD Waterhouse Canada Inc.

(40) **Releasers** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers, assigns, beneficiaries, trustees, agents and legal or other representatives.

(41) **Second Notice** means the short-form, long-form and internet banner notices of the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule H**, **Schedule I** and **Schedule J** hereto or as fixed by the Court.

(42) **Settlement** means the settlement of the Action on the terms provided in this Settlement Agreement.

(43) **Settlement Agreement** means this agreement, including the recitals and schedules.

(44) **Settlement Amount** means seventy million two hundred and fifty thousand Canadian dollars (C\$70,250,000).

(45) **Subsequent Settlement** has the meaning given to such term in Section 13.1(1)(b).

(46) **Subsequent Settlement Amount** has the meaning given to such term in Section 13.1(1)(c).

(47) **TD Mutual Funds** means all mutual fund trusts (including, without limitation, all series of units thereof) of which the Defendant is trustee or was trustee at any time on or prior to the Date of Execution (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated,

(ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

(48) **Termination Notice** has the meaning given to such term in Section 6.1(1).

(49) **Trust Account** means a guaranteed investment product, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Class Counsel or the Administrator, once appointed, for the benefit of the Class Members, as provided for in this Settlement Agreement.

(50) **Unknown Claims** means any and all Released Claims against the Releasees which Releasors do not know or suspect to exist in his, her, or its favour as of the Effective Date, and any Defendant Claims against Releasors which Releasees do not know or suspect to exist in his, her, or its favour as of the Effective Date, which if known by the Releasors or Releasees might have affected his, her, or its decision(s) with respect to the settlement. The Releasors and Releasees may hereafter discover facts other than or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Defendant Claims. Nevertheless, the Plaintiff and the Releasees shall expressly, fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Dismiss Order (when it becomes a Final Order) shall have, fully, finally, and forever settled and released, any and all Released Claims and Defendant Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiff and the Releasees acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims and Defendant Claims was separately bargained for and was a key element of the Settlement Agreement.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.

SECTION 2 – APPROVAL AND NOTICE PROCESS

2.1 Commercially Reasonable Efforts

(1) The Parties shall use their commercially reasonable efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Action.

2.2 Motion for First Order

(1) The Plaintiff shall file a motion before the Court, as soon as practicable after the Date of Execution, for an order substantially in the form attached as **Schedule A (“First Order”)**.

(2) The Defendant will consent to the issuance of the First Order.

(3) As soon as practicable following entry of the First Order, Class Counsel shall cause the First Notice to be published and distributed in accordance with the Plan of Notice and the direction of the Court. The costs of publishing and distributing the First Notice shall be paid from the Trust Account as and when incurred.

2.3 Motion for Dismiss Order and Distribution Order

(1) The Plaintiff shall file a motion before the Court for orders substantially in the form attached as **Schedule B (“Dismiss Order”)** and **Schedule C (“Distribution Order”)** as soon as practicable after:

(a) the First Order has been granted; and

(b) the notices described in Section 2.2(3) have been published.

(2) The Defendant will consent to the issuance of the Dismiss Order. The Defendant will not oppose the issuance of the Distribution Order.

(3) At the motion for the Dismiss Order and the Distribution Order, Class Counsel shall propose for approval by the Court the Distribution Protocol or such other plan for distributing the Net Settlement Amount to the Class as Class Counsel may advise. The Distribution Protocol is the responsibility of Class Counsel and the Defendant has no involvement in its design. Accordingly, the approval of the Distribution Protocol shall be considered separately from the approval of the

Settlement and is not a condition of the approval of the Settlement itself and the dismissal of the Action as against the Defendant without costs and with prejudice in accordance with the Dismiss Order.

(4) The Defendant will take no position or make any submission to the Court concerning the Distribution Protocol, except as requested or required by the Court.

(5) The Plaintiff may make any amendments to the Distribution Protocol, the Distribution Order, the Second Notice or the Plan of Notice as it relates to the Second Notice requested or directed by the Court.

(6) As soon as practicable following the Implementation Date, Class Counsel and the Administrator shall cause the Second Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court. The costs of publishing the Second Notice shall be paid from the Trust Account as and when incurred.

2.4 Pre-Motion Confidentiality

(1) Until the motion required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), pursuant to regulatory requirements as necessary to give effect to its terms, or as otherwise required by law.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) The Defendant shall pay the Settlement Amount to Class Counsel by November 8, 2024 for deposit into the Trust Account.

(2) Payment of the amount specified in Section 3.1(1) shall be made by wire transfer. At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank,

ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest, taxes and costs.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Action, including, but not limited to, legal fees, judicial costs, taxes or costs of notice.

(6) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.

(7) Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

(8) Within thirty (30) days of the Effective Date, Class Counsel shall transfer control of the Trust Account to the Administrator, but before doing so Class Counsel may deduct and retain from the monies in the Trust Account the Class Counsel Fees and the Class Counsel Disbursements approved by the Court.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Class. The Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including

any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Administrator.

SECTION 4 – NO REVERSION

4.1 No Reversion

(1) Unless this Settlement Agreement is terminated as provided herein, the Defendant shall not be entitled to the repayment from the Plaintiff of any portion of the Settlement Amount or any interest earned on the Settlement Amount in the Trust Account. In the event this Settlement Agreement is terminated, the Defendant shall be entitled to the repayment only to the extent of and in accordance with Section 6.3(1).

SECTION 5 – OPTING-OUT

5.1 Opt-Outs

(2) An opt-out right was provided by the Order of the Honourable Justice Belobaba dated December 14, 2021. The opt-out deadline expired on April 8, 2022 pursuant to that Order. The Parties acknowledge and confirm that RicePoint Administration Inc., the notice and opt-out administrator appointed by the Court pursuant to the Order of the Honourable Justice Belobaba dated December 14, 2021, confirmed that no Person opted out of the Action.

(3) A supplemental opt-out right will be provided to those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022, as set out in the First Order.

(4) The Plaintiff, through Class Counsel, expressly waived his right to opt out of the Action.

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

(1) The Plaintiff and the Defendant shall, in their respective discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so (“**Termination Notice**”) to the other Party hereto within thirty (30) days of the date on which:

- (a) the Court declines to dismiss the Action against the Defendant;
- (b) the Court declines to approve this Settlement Agreement or any material part hereof;
- (c) the Court approves this Settlement Agreement in a materially modified form;
- (d) the Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as **Schedule B**, and such order becomes a Final Order; or
- (e) the Dismiss Order is reversed on appeal and the reversal becomes a Final Order.

(2) Except as provided for in Section 6.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by the Court with respect to the Distribution Order, Class Counsel Fees or Class Counsel Disbursements, or the Distribution Protocol, shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to approve this Settlement Agreement, which has not been decided, shall proceed; and
- (b) any order approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise.

6.3 Return of Settlement Amount Following Termination

(1) If the Settlement Agreement is terminated, Class Counsel, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, shall return to the Defendant the amount the Defendant has paid to Class Counsel, plus all accrued interest thereon and less any costs incurred with respect to the notices required by Section 2.2(3), and any costs of translation required by Section 14.12, such costs in total not to exceed one hundred and fifty thousand Canadian dollars (CAD \$150,000).

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(2), 3.2(3), 6.1, 6.2, 6.3, 6.4, 9.1 and 9.2 (the “**Surviving Provisions**”), and the recitals, definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The recitals, definitions and Schedules shall survive only for the limited purpose of the interpretation of the Surviving Provisions within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

(1) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against the Defendant; and (ii) any and all Released Claims as against all Releasees.

(2) Upon the Effective Date, subject to Section 7.2, each of the Releasers: (i) shall be deemed to have, and by operation of the Dismiss Order, shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have against the Releasees, regardless of whether such Releaser executes and delivers a proof of claim and release form; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Releasees; and (iii) agrees and covenants not to sue any of the Releasees on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Releasee related in any way to any Released Claims.

7.2 Covenant Not To Sue

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

(1) Upon the Effective Date, the Releasers shall not then or thereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this Section 7.3(1) does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions. For greater certainty and without limiting the generality of the foregoing,

the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

7.4 Dismissal of the Action

(1) Upon the Effective Date, the Action shall be dismissed with prejudice and without costs as against the Defendant.

7.5 Releases a Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8 – CLAIMS AGAINST OTHER ENTITIES

8.1 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any Person other than the Releasees.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

(1) The Plaintiff and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees or any one of them, or of the truth of any of the claims or allegations contained in the Action, or any other pleading filed by the Plaintiff.

9.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

9.3 No Further Litigation

(1) Neither Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court. For the avoidance of doubt, this Section 9.3(1) does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Appointment of the Administrator

(1) By order of the Court, the Administrator will be appointed to serve until such time as the Net Settlement Amount is distributed in accordance with this Settlement Agreement and the Distribution Protocol, on the terms and conditions and with the powers, rights, duties and responsibilities set out in this Settlement Agreement and in the Distribution Protocol.

10.2 Information and Assistance from the Defendant

(1) By order of the Court in the Distribution Order, the Defendant will deliver, or will cause to be delivered, to Class Counsel an electronic copy of the account-level or customer-level data

that the Defendant prepared for the purposes of mediation in the Action, along with the name, email address and mailing address corresponding to each account or customer identified in that data. Class Counsel shall provide this data to the Administrator upon its appointment by the Court to be used only for the purpose of Section 10.2(2).

(2) Class Counsel and the Administrator may use the information obtained under Section 10.2(1) for the purpose of administering and implementing this Settlement Agreement, the Plan of Notice and the Distribution Protocol, but Class Counsel and the Administrator shall otherwise keep confidential the information obtained under Section 10.2(1).

(3) For greater certainty, any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Settlement Agreement and the Distribution Protocol.

10.3 No Responsibility for Administration or Fees

(1) The Defendant shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account, including, but not limited to, Administration Expenses, Class Counsel Fees and Class Counsel Expenses.

SECTION 11 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATION EXPENSES

11.1 Class Counsel Fees, Class Counsel Disbursements and Administration Expenses

(1) The Defendant shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiff's or Class Members' respective lawyers, experts, advisors, agents, or representatives.

(2) Class Counsel shall pay the costs of the notices required by Sections 2.2(3) and 2.3(6) and any costs of translation required by Section 14.12 from the Trust Account, as they become due. The Releasees shall not have any responsibility for the costs of the notices or translation.

(3) Class Counsel may seek the Court's approval to pay Class Counsel Fees and Class Counsel Disbursements contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Fees and Class Counsel Disbursements shall be reimbursed and paid solely out of the Trust Account after the Effective Date. No Class Counsel Fees or Class Counsel Disbursements shall be paid from the Trust Account prior to the Effective Date.

(4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(5) The Defendant shall not be liable for any fees, disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members, or any lien of any Person on any payment to any Class Member from the Settlement Amount.

SECTION 12 – FUNDING AND HONORARIUM

12.1 Funding and Honorarium

(1) Immediately following the motion for the Dismiss Order and the Distribution Order, Class Counsel may seek orders from the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.

(2) Class Counsel are not precluded from making additional motions to the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.

(3) The Defendant acknowledges that it is not party to any motion concerning the payment of the Funding Commission or the payment of an honorarium to the Plaintiff, it will have no involvement in any such motion, and it will not take any position or make any submissions to the Court concerning any such motion, except as requested and required by the Court.

(4) Any order or proceeding relating to payment of the Funding Commission or the payment of an honorarium to the Plaintiff, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or affect or delay the Effective Date and the settlement of this Action provided herein.

12.2 Release of the Funder's Security

- (1) After the Effective Date, the Parties shall cooperate in taking all reasonably required steps to secure the prompt payment out of Court to the Funder of the Funder's Security.

SECTION 13 – SUBSEQUENT SETTLEMENTS OF OTHER 2018 ACTIONS

13.1 Definitions

- (1) For the purposes of sections 13.1 and 13.2 hereof:
 - (a) **“Material Adverse Litigation Event”** means an event that has a material adverse effect on the quantum of potential recovery and/or overall likelihood of success against the defendant(s) in the Other 2018 Action in which there is a Subsequent Settlement and meets the following criteria. This event would only occur if there is a decision of a Court in any of the Other 2018 Actions (**“Adverse Decision”**) or a change in the financial circumstances of the defendant(s) in the applicable Other 2018 Action that would cause Class Counsel, acting reasonably and in good faith, to materially alter its assessment of its client's position in settlement negotiations with the defendant(s) and (a) has a material adverse effect upon the quantum of potential recovery and/or overall likelihood of success and/or enforcement against the defendant(s), or (b) has the effect of materially decreasing the valuation of the applicable Other 2018 Action. An **“Adverse Decision”** might include, but is not limited to, a judgment dismissing a motion for certification in the applicable Other 2018 Action, a judgment that materially reduces the size of the class relative to the class proposed in the applicable Other 2018 Action, a judgment that materially reduces the class period relative to the proposed class period in the applicable Other 2018 Action, and a judgment dismissing (in whole or in part) the applicable Other 2018 Action.
 - (b) **“Subsequent Settlement”** means any settlement of any of the Other 2018 Actions; and
 - (c) **“Subsequent Settlement Amount”** means the amount that the defendant(s) in any of the Other 2018 Actions agrees to pay pursuant to a Subsequent Settlement.

13.2 Obligations in the Event of a Subsequent Settlement

(1) Class Counsel acknowledges its professional obligations and that it intends to maximize the recovery of damages alleged in the Other 2018 Actions. As such, Class Counsel will endeavour to, acting reasonably and in good faith, negotiate terms in any Subsequent Settlement that are at least as favourable to the class members in the Other 2018 Actions than the settlement in this Settlement Agreement.

(2) As soon as and in the event that such disclosure is permitted pursuant to the terms of a Subsequent Settlement, Class Counsel shall advise the Defendant in writing of the Subsequent Settlement and the Subsequent Settlement Amount. Class Counsel shall also advise the Defendant in writing whether in Class Counsel's opinion, acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the Other 2018 Action than the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the following factors:

- (a) the Subsequent Settlement Amount, compared to the Settlement Amount under this Settlement Agreement;
- (b) the percentage equal to the Subsequent Settlement Amount as a percentage of Class Counsel's estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the defendant(s) in the applicable Other 2018 Action, compared to the percentage equal to the Settlement Amount as a percentage of Class Counsel's estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the Defendant;
- (c) differences in the facts of the applicable Other 2018 Action and this Action that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action;
- (d) whether in Class Counsel's opinion, acting reasonably and in good faith, a Material Adverse Litigation Event has occurred; and

- (e) any other factor that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action.
- (3) The Defendant acknowledges and understands that the quantification of the trailing commissions paid to Discount Brokers by the Defendant or the defendant(s) in the applicable Other 2018 Action under Section 13.2(2)(b) may not be able to be precisely and accurately determined because of, among other things, incomplete or insufficient data. In such circumstances, Class Counsel's estimate, acting reasonably, in good faith and relying on expert evidence, of the amount of the trailing commissions paid to Discount Brokers shall be accepted by the Defendant as a reasonable estimation of the trailing commissions for the purposes of sections 13.1 and 13.2.
- (4) In advising the Defendant under Section 13.2(2), Class Counsel, acting reasonably and in good faith, shall provide the Defendant with a written summary of the factors considered by Class Counsel under Sections 13.2(2)(a) to 13.2(2)(e), subject to any legal privilege owed to its client(s) in the applicable Other 2018 Action or confidentiality obligations to the defendant(s) in the applicable Other 2018 Action.
- (5) On the motion for Court approval of a Subsequent Settlement, Class Counsel shall include in the evidence filed in support of the motion a statement as to whether in Class Counsel's opinion, acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the applicable Other 2018 Action than the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the factors set out in Sections 13.2(2)(a) to 13.2(2)(e).
- (6) None of the provisions of this Section 13 shall be interpreted to impose any obligation on Class Counsel to (i) disclose any information which it would not otherwise be legally permitted to disclose in the course of seeking approval of a Subsequent Settlement, (ii) waive any settlement, litigation, solicitor-client or other privilege absent the requisite permission or instructions to do so, or (iii) do anything in the Other 2018 Actions other than comply with its professional obligations and seek to maximize the recovery of damages alleged in those proceedings.

(7) Other than what is expressly provided in this section, this section and this Settlement Agreement confer no rights of standing to the Defendant in respect of the Other 2018 Actions.

SECTION 14 – MISCELLANEOUS

14.1 Motions for Directions

(1) Class Counsel or the Defendant may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

14.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

14.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

14.4 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and

including the day on which the second event happens, including all calendar days;
and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

(1) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, the Parties and the Class Members to interpret and enforce the terms, conditions and obligations under this Settlement Agreement, the First Order, the Dismiss Order and the Distribution Order.

14.6 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

14.7 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

14.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all of the Parties, and any such modification or amendment must be approved by the Court.

14.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendant, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made by the Defendant shall be binding upon all of the Releasees.

14.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

14.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

14.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais*. Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

14.13 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

14.14 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

14.15 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

14.16 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

14.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

Anthony O'Brien
Siskinds LLP
65 Queen Street West, Suite 1155
Toronto, ON M5H 2M5
Tel: 416-594-4394
Fax: 519-672-6065
Email: anthony.obrien@siskinds.com

For the Defendant:

Shane D'Souza
McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Tel: 416-601-8196
Fax: 416-868-0673
Email: sdsouza@mccarthy.ca

14.18 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

PETER WESTWOOD on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:


Siskinds LLP

TD ASSET MANAGEMENT INC.:

Name of Authorized Signatory:

Tim WIGGAN

Signature of Authorized Signatory:


Tim Wiggan, TD Bank Group

PETER WESTWOOD on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory: Anthony O'Brien

Signature of Authorized Signatory:  Signed by:
866D01A5EEE14CD
Siskinds LLP

TD ASSET MANAGEMENT INC.:

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Tim Wiggan, TD Bank Group

SCHEDULE A
FIRST ORDER

- 2 -

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, amending the class definition in the Action, approving the notices of settlement approval hearing and the method of dissemination of the notices, and setting a supplemental opt-out process and deadline, was heard on *[insert]* at *[insert]*.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated *[insert]* attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the Defendant consents to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the class definition set out in paragraph 3 of the certification Order of the Honourable Justice Belobaba dated February 27, 2020 is amended, for settlement purposes, to the following (“**Class**” or “**Class Member**”):

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.

“Excluded Persons” means: (a) the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Belobaba dated December 14, 2021 providing for certification notice and an opt-out process; or (c) any Person who would otherwise be a Class Member and who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 but who validly excludes themselves from the Action in accordance with this Order.

5. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval hearing (“**First Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.

6. **THIS COURT ORDERS** that the plan of dissemination for the First Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the First Notice shall be disseminated in accordance with the Plan of Notice.
7. **THIS COURT ORDERS** that those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (“**Eligible Supplemental Opt-Out Party**” or “**Eligible Supplemental Opt-Out Parties**”) may opt out of this action in accordance with this Order.
8. **THIS COURT ORDERS** that the supplemental opt-out form (“**Supplemental Opt-Out Form**”), substantially in the form attached as Appendix “A” to the long-form First Notice, is hereby approved.
9. **THIS COURT ORDERS** that the deadline for Eligible Supplemental Opt-Out Parties to opt out of the action (“**Supplemental Opt-Out Deadline**”) is the date that is sixty (60) days after the day on which the First Notice is first published.
10. **THIS COURT ORDERS** that any Eligible Supplemental Opt-Out Party who opts out of this class proceeding by the Supplemental Opt-Out Deadline, by complying with the instructions set out in the long-form First Notice and fully completing a Supplemental Opt-Out Form, shall not be a Class Member on and after the date that such person opts out of the class proceeding.
11. **THIS COURT ORDERS** that, subject only to the opt-out right provided to Eligible Supplemental Opt-Out Parties in accordance with paragraphs 7 to 10 of this Order, the period for Class Members to opt out of this action expired as of April 8, 2022.
12. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection to, or comment on, the settlement, the Distribution Protocol or the request for approval of

- 5 -

Class Counsel Fees and Class Counsel Disbursements shall deliver a written statement to Class Counsel, at the address indicated in the First Notice, no later than 21 calendar days prior to the hearing of the settlement approval motion.

The Honourable Justice Akbarali

SCHEDULE B
DISMISS ORDER

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the settlement between the Plaintiff and the Defendant and dismissing this action as against the Defendant, was heard on *[insert]* at *[insert]*.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated *[insert]* attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been *[insert]* written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Defendant consents to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
5. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
6. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
7. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 8, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

9. **THIS COURT ORDERS** that, upon the Effective Date, each Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors, covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
10. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions.
11. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
12. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement or with respect to the Distribution Protocol, including administration, investment, or distribution of the Trust Account.

13. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed as against the Defendant, without costs and with prejudice.

The Honourable Justice Akbarali

SCHEDULE C
DISTRIBUTION ORDER

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the notices of settlement approval and the method of dissemination of the notices, approving the Distribution Protocol, and approving the claims process, was heard on *[insert]* at *[insert]*.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated *[insert]* attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Distribution Protocol has passed and there have been *[insert]* written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Defendant does not oppose this Order;

AND ON BEING ADVISED that [*insert*] consents to being appointed as the Administrator;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval (“**Second Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.
5. **THIS COURT ORDERS** that the plan of dissemination for the Second Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the Second Notice shall be disseminated in accordance with the Plan of Notice.
6. **THIS COURT ORDERS** that the Distribution Protocol, substantially in the form attached hereto as **Schedule 6**, is approved for the purposes of distributing the Net Settlement Amount.
7. **THIS COURT ORDERS** that the form and content of the claim form (“**Claim Form**”), substantially in the form attached hereto as **Schedule 7**, is approved.
8. **THIS COURT ORDERS** that [*insert*] is appointed as the Administrator.

9. **THIS COURT ORDERS** that to be entitled to participate in a distribution from the Net Settlement Amount, a Class Member must:
- (a) submit a properly completed Claim Form to the Administrator, using the online claim portal established by the Administrator or by submitting a paper Claim Form by mail or courier to the Administrator, postmarked or received by the Administrator on or before 11:59pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which any part of Part 2 of the Plan of Notice is first completed (“**Claims Bar Deadline**”);
 - (b) submit, together with the Claim Form, any supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Administrator; and
 - (c) otherwise comply with the instructions set out in the Claim Form.
10. **THIS COURT ORDERS** that the Defendant shall forthwith deliver, or cause to be delivered, to Class Counsel the data required under section 10.2(1) of the Settlement Agreement.

The Honourable Justice Akbarali

SCHEDULE D
PLAN OF NOTICE

PLAN OF NOTICE

Unless otherwise modified herein, the definitions set out in the Settlement Agreement dated August [insert], 2024 apply.

Part 1: First Notice will be disseminated (or caused to be disseminated) by Class Counsel as follows:

1. Short-form notice (substantially in the form attached as **Schedule E** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule F** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule G** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, no less than 30 days and no more than 35 days; and

- (b) published as a 12-day sponsored news link on Stockhouse.

Part 2: Second Notice will be disseminated by Class Counsel and the Administrator as follows:

1. Short-form notice (substantially in the form attached as **Schedule H** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule I** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule J** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days; and
 - (b) published as a 12-day sponsored news link on Stockhouse.

SCHEDULE E
SHORT-FORM FIRST NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Proposed Settlement and Supplemental Opt-Out Deadline for Certain Class Members

Have you held units of a TD mutual fund through a discount broker?

A class action settlement has been reached with TD Asset Management Inc. for C\$70.25 million to resolve the claims asserted on behalf of all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD mutual fund trust through a discount broker (“Class”).

The settlement is subject to approval by the Ontario Superior Court of Justice. A settlement approval hearing has been set for *[insert]*. At that same hearing, the Court will also consider a motion to approve Class Counsel’s fees, which will not exceed *[insert]*, plus reimbursement for expenses incurred by Class Counsel in the litigation, plus taxes on the fees and disbursements.

If you wish to object to the settlement, Class Counsel’s fees and disbursements, or the Distribution Protocol that sets out the manner in which the net settlement funds will be distributed among eligible Class Members, you must do so by *[insert]*.

If you are a Class Member who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (meaning you never held units of a TD Mutual Fund through a Discount Broker on or before April 9, 2022), and you do not want to be part of the class action and be bound by the terms of the settlement, you must opt out by submitting a supplemental opt-out form by *[insert opt-out deadline]*.

For other Class Members (meaning you held units of a TD Mutual Fund through a Discount Broker on or before April 8, 2022, regardless of whether you continued to hold those units after April 8, 2022), your opt-out period expired on April 8, 2022 and there is no further right to opt out of the class action.

For important information regarding the class action, to determine if you are a member of the Class, to obtain a copy of the supplemental opt-out form, to object, and to understand your legal rights:

- View the long-form notice at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>
- Call Class Counsel at *[insert]* or toll-free *[insert]*

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a

discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit [*insert relevant website*] for more information about that settlement.

The publication of this notice was authorized by the Superior Court of Justice of the Province of Ontario

SCHEDULE F
LONG-FORM FIRST NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Proposed Settlement and Supplemental Opt-Out Deadline

Read this notice carefully as it may affect your legal rights

THIS NOTICE IS TO:

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a discount broker, except for the Excluded Persons (“**Class**” and “**Class Members**”).

In the above class definition:

“**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“**Defendant**”) is trustee or was trustee at any time on or prior to *[insert Date of Execution]* (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

“**Excluded Persons**” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who validly opted or opts out of the class action.

Examples of discount brokers are BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, TD Direct Investing, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

A settlement (“**Settlement**”) has been reached in the class action in the Ontario Superior Court of Justice against the Defendant (“**Action**”). This notice contains important details about the Settlement.

IMPORTANT DEADLINES

Objection Deadline (to object to the Settlement, Class Counsel’s fee request or the Distribution Protocol): *[insert]*

Supplemental Opt-Out Deadline (for those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 to exclude themselves from the Action and the settlement): *[insert]*

IMPORTANT NOTE ABOUT SEPARATE SETTLEMENT FOR NON-DISCOUNT BROKER HOLDERS OF TD MUTUAL FUNDS

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to discount brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to discount brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments.

The Defendant has denied these allegations and continues to deny all allegations.

On behalf of the Class, the Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

THE CERTIFICATION ORDER

By Orders dated February 27, 2020 and February 5, 2021, the Ontario Superior Court of Justice (“**Court**”) certified the Action as a class proceeding under the Ontario *Class Proceedings Act, 1992*. The Court appointed the plaintiff, Peter Westwood, as the representative plaintiff for the Class (“**Plaintiff**”).

By Order dated [insert], the class definition was amended to the definition noted above.

THE SETTLEMENT

On [insert], the Plaintiff and the Defendant executed a Settlement Agreement (“**Settlement Agreement**”), which is subject to approval by the Court. The Settlement Agreement provides for the payment of C\$70,250,000 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members.

The Settlement Agreement provides that if approved by the Court, the claims of Class Members asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed.

The Settlement Agreement is not an admission of liability, wrongdoing, or fault on the part of the Defendant, which has denied, and continues to deny, the allegations against it.

SETTLEMENT APPROVAL HEARING

The Settlement Agreement is conditional on approval by the Court. The Settlement Agreement will be approved if the Court determines that it is fair and reasonable and in the best interests of the Class Members to approve it.

The Court will hear a motion for approval of the Settlement on [insert] at [insert].

CLASS COUNSEL’S FEES AND OTHER EXPENSES

The Plaintiff and the Class are represented by Siskinds LLP (“**Class Counsel**”). Class Counsel are conducting the Action on a contingent fee basis. On [insert], Class Counsel will make a motion to the Court for approval of their fees and the fees of Bates Barristers P.C., which in the aggregate will not exceed [insert], plus reimbursement for expenses incurred in the litigation in the maximum amount of [insert], plus applicable taxes on the fees and expenses.

A funding agreement between the Plaintiff and Claims Funding International, PLC (“**Funder**”) was previously approved by the Court on June 20, 2019. Amounts owing to the Funder will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

On *[insert]*, Class Counsel will also seek the Court’s approval for the payment of an honorarium to the Plaintiff in the maximum amount of *[insert]*. Class Counsel will be requesting that the honorarium be deducted directly from the Settlement Amount.

The fees of the claims administrator, together with any other costs relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”), will also be paid from the Settlement Amount.

CLASS MEMBERS’ ENTITLEMENT TO COMPENSATION

If the Settlement Agreement is approved by the Court, the Settlement Amount, after deduction of Class Counsel’s fees and expenses, amounts payable to the Funder, any approved honorarium for the Plaintiff and Administration Expenses (“**Net Settlement Amount**”) will be distributed to Class Members who file valid and timely claims in accordance with the Distribution Protocol.

On *[insert]*, the Plaintiff will seek the Court’s approval of the Distribution Protocol and a process by which Class Members can claim compensation from the Net Settlement Amount.

The proposed Distribution Protocol will provide that in order to determine the individual entitlements of Class Members who make claims, the losses of each claimant will be calculated in accordance with the Distribution Protocol. Once the notional losses of all Class Members who have filed valid claims have been calculated, the Net Settlement Amount will be allocated to those Class Members in proportion to their percentage of the total notional losses calculated for all valid claims filed. Because the Net Settlement Amount will be distributed *pro rata*, it is not possible to estimate the individual recovery of any individual Class Member until all the claims have been received and reviewed.

The approval of the Settlement Agreement is not contingent on the approval of the Distribution Protocol. The Court may still approve the Settlement Agreement even if it does not approve the Distribution Protocol or approves amendments to the Distribution Protocol.

PARTICIPATION IN THE APPROVAL MOTION

The following material will be posted on Class Counsel’s website dedicated to the Action (<https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>) on or before the dates set out below:

1. the Settlement Agreement (posted prior to or at the time of the publication of this notice);
2. the proposed Distribution Protocol (posted by *[6 weeks prior to settlement approval hearing]*); and
3. a summary of the basis upon which Class Counsel recommends the Settlement and Distribution Protocol (posted by *[6 weeks prior to settlement approval hearing]*).

Class Members who wish to comment on, or make an objection to, the approval of the Settlement Agreement, the Distribution Protocol or the fees and disbursements of Class Counsel shall deliver (by email, mail or courier) a written submission to Class Counsel, to be postmarked or received no later than *[insert]*, at the following email address or mailing address:

Zohra Bhimani
 Siskinds LLP
 275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
 Tel: 226-330-0409
 Email: zohra.bhimani@siskinds.com

Any objections delivered by that date will be filed with the Court.

Class Members may attend at the hearing whether or not they deliver an objection. Class Members who wish to have a lawyer speak on their behalf at the hearing may retain one to do so at their own expense.

SUPPLEMENTAL OPT-OUT RIGHT FOR CERTAIN CLASS MEMBERS

If you are a Class Member who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (meaning you never held units of a TD Mutual Fund through a Discount Broker on or before April 9, 2022), and you do not want to be bound by the outcome of the Action, including the terms of the Settlement if approved, you must “opt out”, meaning that you must exclude yourself from the Action in accordance with the following procedure.

Such class Members who do not opt out will (i) be entitled to participate in the Settlement; (ii) be bound by the terms of the Settlement; and (iii) not be permitted to bring other legal proceedings in relation to the matters alleged in the Action against the Defendant, or any person released by the approved Settlement. Conversely, if you opt out of the Action, you will not be able to make a claim to receive compensation from the Settlement Amount but will maintain the right to pursue your own claim against the Defendant relating to the matters alleged in the Action.

If you wish to opt out of the Action, you must complete, sign and return (by email, mail or courier) the supplemental opt-out form provided at Appendix “A” hereto to Class Counsel.

In order for your opt-out to be valid, your complete and signed supplemental opt-out form must be postmarked or received by Class Counsel by no later than **[insert]**.

For other Class Members (meaning you held units of a TD Mutual Fund through a Discount Broker on or before April 8, 2022, regardless of whether you continued to hold those units after April 8, 2022), your opt-out period expired on April 8, 2022 and there is no further right to opt out of the Action.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information in both languages are available on Class Counsel’s website at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>.

Questions relating to the Action may be directed to Class Counsel using the contact details above.

Si vous avez besoin d’aide en français, veuillez contacter les avocats du groupe en utilisant les coordonnées ci-dessus et nous dirigerons votre demande vers une personne appropriée.

The publication of this notice was authorized by the Ontario Superior Court of Justice

(PLEASE CIRCLE THE APPROPRIATE LANGUAGE)

I believe that **I am / the organization that I represent is** a member of the Class in the Action.

I believe that **I am not / the organization that I represent is not** amongst the persons and entities excluded from the Action.

I understand that by opting out of the Action, **I will not be eligible / the organization that I represent will not be eligible** for any benefit that may be available to the Class upon resolution of this matter, if and when such resolution may occur.

I, _____ (print your full name), **OPT OUT FROM THE ACTION** and wish to be excluded from this class action.

I wish to opt out from this class action for the following reason(s) (*optional*):

I, _____ (print your full name), **CERTIFY** that the information provided herein is complete and true.

Date

Signature

In order to validly opt out, you must complete and send this Supplemental Opt-Out Form by no later than [DATE] to:

Zohra Bhimani
Siskinds LLP
275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
Email: zohra.bhimani@siskinds.com

SCHEDULE G
INTERNET BANNER FIRST NOTICE

DRAFT TEXT (subject to design)

Have you held units of a TD mutual fund
through a discount broker?

You may be affected by a proposed class
action settlement.

Click to learn your legal rights.

[Link to <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>]

SCHEDULE H
SHORT-FORM SECOND NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Have you held units of a TD mutual fund through a discount broker?

The Ontario Superior Court of Justice approved a class action settlement with TD Asset Management Inc. for C\$70.25 million to resolve the claims asserted on behalf of all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD mutual fund trust through a discount broker (“Class”).

This settlement is not an admission of liability or wrongdoing by the Defendant. It is an efficient compromise between the parties of their disputed positions.

To be eligible to obtain compensation from the settlement, Class Members must submit a Claim Form to the Administrator at *[insert Administrator website]* by *[insert]*.

For important information regarding the class action, to determine if you are a member of the Class, and to learn how to make a claim for compensation:

- View the long-form notice at *[insert Administrator website]*
- Contact the Administrator at:

[insert Administrator contact details]

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

The publication of this notice was authorized by the Superior Court of Justice of the Province of Ontario

SCHEDULE I
LONG-FORM SECOND NOTICE

DRAFT TEXT (subject to design)

[NTD: The language of the notice regarding claims for compensation is subject to settling the terms of the proposed Distribution Protocol, as the notice language will need to line up with the terms of the proposed Distribution Protocol.]

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Read this notice carefully as it may affect your legal rights

THIS NOTICE IS TO:

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a discount broker, except for the Excluded Persons (“**Class**” and “**Class Members**”).

In the above class definition:

“**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“**Defendant**”) is trustee or was trustee at any time on or prior to *[insert Date of Execution]* (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

“**Excluded Persons**” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who previously opted out of the class action.

Examples of discount brokers are BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, TD Direct Investing, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

A settlement (“**Settlement**”) has been reached in the class action against the Defendant (“**Action**”). The Ontario Superior Court of Justice (“**Court**”) has approved the Settlement. This notice contains important details about the Settlement and how to submit a claim for compensation from the Settlement.

IMPORTANT DEADLINE TO FILE CLAIM FOR COMPENSATION

Claims Bar Deadline (to file a claim for compensation): *[insert]*

IMPORTANT NOTE ABOUT SEPARATE SETTLEMENT FOR NON-DISCOUNT BROKER HOLDERS OF TD MUTUAL FUNDS

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to discount brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to discount brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments.

The Defendant has denied these allegations and continues to deny all allegations.

On behalf of the Class, the Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

SETTLEMENT APPROVAL, FEE APPROVAL AND OTHER MATTERS

On *[insert]*, the Court approved the Settlement. The Settlement provides for the payment of C\$70,250,000 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members.

The Settlement Agreement provides that the claims of Class Members (who did not opt out) asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed.

The Settlement Agreement is not an admission of liability, wrongdoing or fault on the part of the Defendant, which has denied, and continues to deny, the allegations against it.

The Court awarded Siskinds LLP (“**Class Counsel**”) and Bates Barristers P.C. total legal fees in the amount of *[insert]*, plus disbursements of *[insert]*, plus applicable taxes on the fees and expenses. As is customary in such cases, Class Counsel conducted the class action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. The approved fees and disbursements will be deducted from the Settlement Amount before it is distributed to Class Members.

A funding agreement between the Plaintiff and Claims Funding International, PLC (“**Funder**”) was previously approved by the Court on June 20, 2019. Amounts owing to the Funder will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

The Court also approved the payment of an honorarium to the Plaintiff in the amount of *[insert]*. The honorarium will be deducted from the Settlement Amount before it is distributed to Class Members.

Expenses incurred or payable relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”) will also be paid from the Settlement Amount before it is distributed to Class Members.

The Settlement Amount includes all legal fees, the Funder’s commission, taxes and administrative expenses.

CLAIMS ADMINISTRATOR

The Court has appointed *[insert]* as the claims administrator for the Settlement (“**Administrator**”). The Administrator will, among other things: (i) receive and process claims for compensation from the Settlement; (ii) determine Class Members’ eligibility for and entitlement to compensation pursuant to the Distribution Protocol; (iii) communicate with Class Members regarding claims for compensation; and (iv) manage and distribute the Settlement Amount in accordance with the Settlement Agreement and the orders of the Court.

The Administrator can be contacted at:

[insert Administrator full contact details]

CLASS MEMBERS' ENTITLEMENT TO COMPENSATION

The Settlement Amount, after deduction of Class Counsel's fees and expenses, amounts payable to the Funder, the approved honorarium for the Plaintiff and Administration Expenses ("**Net Settlement Amount**") will be distributed to Class Members in accordance with the Distribution Protocol approved by the Court.

Class Members will be eligible for compensation if they submit a completed Claim Form, including any supporting documentation, with the Administrator, and their claim satisfies the criteria set out in the Distribution Protocol.

To be eligible for compensation, Class Members must submit their Claim Form **no later than [insert]** ("**Claims Bar Deadline**").

The most efficient way to file a claim is to visit the Administrator's website at [insert] and file an online claim. The website provides step by step instructions on how to file a claim. In order to verify claims, the Administrator will require supporting documentation, including brokerage statements or confirmations evidencing the claimed transactions. Accordingly, Class Members should visit the Administrator's site as soon as possible so that they have time to obtain the required documentation prior to the Claims Bar Deadline.

While online claims are recommended and preferred, the Administrator will also accept Claim Forms filed by mail or courier. To obtain a copy of the Claim Form, Class Members may contact the Administrator to have one sent by email or regular mail. Claim Forms sent by mail or courier should be sent to the Administrator using the contact details above.

If you have questions about how to complete or file a Claim Form, the documentation required to support a claim, or whether you are a Class Member, please contact the Administrator.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information in both languages are available on the Administrator's website at [insert].

Questions relating to the Action may be directed to the Administrator using the contact details above or Class Counsel:

Zohra Bhimani
Siskinds LLP
275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
Tel: 226-330-0409
Email: zohra.bhimani@siskinds.com

Si vous avez besoin d'aide en français, veuillez contacter les avocats du groupe en utilisant les coordonnées ci-dessus et nous dirigerons votre demande vers une personne appropriée.

The publication of this notice was authorized by the Ontario Superior Court of Justice

SCHEDULE J
INTERNET BANNER SECOND NOTICE

DRAFT TEXT (subject to design)

Have you held units of a TD mutual fund
through a discount broker?

You may be eligible to obtain compensation
from a class action settlement.

Click to learn your legal rights.

[Link to Administrator website]

SCHEDULE "2"
Short Form Notice

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Have you held units of a TD mutual fund through a discount broker?

The Ontario Superior Court of Justice approved a class action settlement with TD Asset Management Inc. for C\$70.25 million to resolve the claims asserted on behalf of all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to September 11, 2024, units of a TD mutual fund trust through a discount broker (“Class”).

This settlement is not an admission of liability or wrongdoing by the Defendant. It is an efficient compromise between the parties of their disputed positions.

To be eligible to obtain compensation from the settlement, Class Members must submit a Claim Form to the Administrator at www.trailingcommissionssettlement.com by *[insert]*.

For important information regarding the class action, to determine if you are a member of the Class, and to learn how to make a claim for compensation:

- View the long-form notice at www.trailingcommissionssettlement.com
- Contact the Administrator at:

[insert Administrator contact details]

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit <https://www.kalloghlianmyers.com/tdsettlement> for more information about that settlement.

The publication of this notice was authorized by the Superior Court of Justice of the Province of Ontario

SCHEDULE "3"
Long Form Notice

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Read this notice carefully as it may affect your legal rights

THIS NOTICE IS TO:

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to September 11, 2024, units of a TD Mutual Fund through a discount broker, except for the Excluded Persons (“**Class**” and “**Class Members**”).

In the above class definition:

“**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“**Defendant**”) is trustee or was trustee at any time on or prior to September 11, 2024 (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

“**Excluded Persons**” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who previously opted out of the class action.

Examples of discount brokers are BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, TD Direct Investing, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

A settlement (“**Settlement**”) has been reached in the class action against the Defendant (“**Action**”). The Ontario Superior Court of Justice (“**Court**”) has approved the Settlement. This notice contains important details about the Settlement and how to submit a claim for compensation from the Settlement.

IMPORTANT DEADLINE TO FILE CLAIM FOR COMPENSATION

Claims Bar Deadline (to file a claim for compensation): **[insert]**

IMPORTANT NOTE ABOUT SEPARATE SETTLEMENT FOR NON-DISCOUNT BROKER HOLDERS OF TD MUTUAL FUNDS

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit <https://www.kalloghlianmyers.com/tdsettlement> for more information about that settlement.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to discount brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to discount brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments.

The Defendant has denied these allegations and continues to deny all allegations.

On behalf of the Class, the Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

SETTLEMENT APPROVAL, FEE APPROVAL AND OTHER MATTERS

On [insert], the Court approved the Settlement. The Settlement provides for the payment of C\$70,250,000 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members.

The Settlement Agreement provides that the claims of Class Members (who did not opt out) asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed.

The Settlement Agreement is not an admission of liability, wrongdoing or fault on the part of the Defendant, which has denied, and continues to deny, the allegations against it.

The Court awarded Siskinds LLP (“**Class Counsel**”) and Bates Barristers P.C. total legal fees in the amount of [insert], plus disbursements of [insert], plus applicable taxes on the fees and expenses. As is customary in such cases, Class Counsel conducted the class action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. The approved fees and disbursements will be deducted from the Settlement Amount before it is distributed to Class Members.

A funding agreement between the Plaintiff and Claims Funding International, PLC (“**Funder**”) was previously approved by the Court on June 20, 2019. Amounts owing to the Funder will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

The Court also approved the payment of an honorarium to the Plaintiff in the amount of [insert]. The honorarium will be deducted from the Settlement Amount before it is distributed to Class Members.

Expenses incurred or payable relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”) will also be paid from the Settlement Amount before it is distributed to Class Members.

The Settlement Amount includes all legal fees, the Funder’s commission, taxes and administrative expenses.

CLAIMS ADMINISTRATOR

The Court has appointed Ricepoint Administration Inc., doing business as Verita Global, as the claims administrator for the Settlement (“**Administrator**”). The Administrator will, among other things: (i) receive and process claims for compensation from the Settlement; (ii) determine Class Members’ eligibility for and entitlement to compensation pursuant to the Distribution Protocol; (iii) communicate with Class Members regarding claims for compensation; and (iv) manage and distribute the Settlement Amount in accordance with the Settlement Agreement and the orders of the Court.

The Administrator can be contacted at:

[insert Administrator full contact details]

CLASS MEMBERS' ENTITLEMENT TO COMPENSATION

The Settlement Amount, after deduction of Class Counsel's fees and expenses, amounts payable to the Funder, the approved honorarium for the Plaintiff and Administration Expenses ("**Net Settlement Amount**") will be distributed to Class Members in accordance with the Distribution Protocol approved by the Court.

A Class Member's eligibility for compensation and the amount of compensation they receive is based on the calculation of their "Trailing Commissions Paid", which is the actual or estimated amount of trailing commissions paid by the Defendant to a discount broker in respect of the TD Mutual Funds held by the Class Member. Each Class Member who submits a valid claim and has Trailing Commissions Paid greater than zero (0) will be eligible to receive a proportionate share of the Net Settlement Amount subject to a minimum entitlement threshold of \$25. For more information about the calculation of Trailing Commissions Paid, please review the Guide to the Distribution Protocol and the Distribution Protocol, both of which are available at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>.

To be eligible for compensation, Class Members must submit a claim, including any required supporting documentation, with the Administrator by **no later than [insert]** ("**Claims Bar Deadline**").

There are two ways a claim for compensation can be made:

1. There is a streamlined claims process available for those Class Members for whom the Administrator has been provided with information by the Defendant that allows the Administrator to calculate the Class Member's Trailing Commissions Paid.
2. There is a full claims process for those Class Members for whom the Administrator has not been provided with such information by the Defendant .

The Streamlined Claims Process

Where the Defendant provides the Administrator with information to calculate the Trailing Commissions Paid of a particular Class Member and their contact information, that Class Member will be entitled to rely on that information when making a claim for compensation.

To facilitate this process, the Administrator will send each such Class Member an email or letter with a username and password to log-on to the online claims portal created by the Administrator. The online claims portal can be found at www.trailingcommissionssettlement.com. The online claims portal will be pre-populated with information on the Trailing Commissions Paid for the Class Member based on the information provided by the Defendant. The Class Member will be able to rely on that pre-populated information to submit a claim for compensation. A Class Member using the streamlined claims process is not required to provide any further supporting documentation for the pre-populated Trailing Commissions Paid.

A Class Member may provide supplemental information using the full claims process described below if they disagree with the pre-populated Trailing Commissions Paid (subject to a monetary threshold set out in the Distribution Protocol) or wish to expand their claim for a period not covered by their pre-populated information.

The emails and letters described above were sent by the Administrator on **[insert date]**. Class Members should check their email and mail for letters sent by the Administrator. If you are uncertain about whether you will receive an email or letter to participate in the streamlined claims process, please contact the Administrator.

The Full Claims Process

All other Class Members can make a claim using the online claims portal created by the Administrator. The online claims portal can be accessed at www.trailingcommissionssettlement.com. The online claims portal provides step-by-step instructions on how to file a claim. In order to verify claims, the Administrator will

require supporting documentation, such as brokerage statements or confirmations evidencing the claimed transactions. Accordingly, Class Members should visit the Administrator's site as soon as possible so that they have time to obtain the required documentation prior to the Claims Bar Deadline.

While use of the online claims portal will be required in most cases, the Administrator will also accept claims filed by mail or courier if a Class Member does not have internet access or they have another good reason for not filing an online claim. To obtain a copy of the Claim Form necessary to submit a claim by mail or courier, Class Members may contact the Administrator to have one sent by email or regular mail. Claim Forms sent by mail or courier should be sent to the Administrator using the contact details above.

If you have questions about how to complete or file a Claim Form, the documentation required to support a claim, or whether you are a Class Member, please contact the Administrator.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information in both languages are available on the Administrator's website at www.trailingcommissionssettlement.com.

Questions relating to the Action may be directed to the Administrator using the contact details above or Class Counsel:

Gigi Pao
Siskinds LLP
Tel: 226.636.1615
Email: gigi.pao@siskinds.com

Si vous avez besoin d'aide en français, veuillez contacter les avocats du groupe en utilisant les coordonnées ci-dessus et nous dirigerons votre demande vers une personne appropriée.

The publication of this notice was authorized by the Ontario Superior Court of Justice

SCHEDULE "4"
Internet Banner

DRAFT TEXT (subject to design)

Have you held units of a TD mutual fund
through a discount broker?

You may be eligible to obtain compensation
from a class action settlement.

Click to learn your legal rights.

[Link to
www.trailingcommissionssettlement.com]

SCHEDULE "5"
Plan of Notice

PLAN OF NOTICE

Unless otherwise modified herein, the definitions set out in the Settlement Agreement dated September 11, 2024 apply.

Part 1: First Notice will be disseminated (or caused to be disseminated) by Class Counsel as follows:

1. Short-form notice (substantially in the form attached as **Schedule E** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule F** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule G** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, no less than 30 days and no more than 35 days; and

- (b) published as a 12-day sponsored news link on Stockhouse.

Part 2: Second Notice will be disseminated by Class Counsel and the Administrator as follows:

1. Short-form notice (substantially in the form attached as **Schedule H** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule I** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule J** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days; and
 - (b) published as a 12-day sponsored news link on Stockhouse.

SCHEDULE 6
Distribution Protocol

PROPOSED DISTRIBUTION PROTOCOL

This Distribution Protocol should be read in conjunction with the Settlement Agreement dated September 11, 2024 (“**Settlement Agreement**”).

DEFINED TERMS

1. The definitions set out in the Settlement Agreement apply to and are incorporated herein. Where a term is defined both in the Settlement Agreement and this Distribution Protocol, the definition in this Distribution Protocol shall govern.
2. The following definitions apply to this Distribution Protocol:
 - (a) **Authorized Claimant** means a Class Member who submits a valid Claim to the Administrator that is accepted as set out in paragraph 26 hereof;
 - (b) **Claim** means an online claim form on the Administrator’s website or a paper claim form that a Class Member must complete and submit before the Claims Filing Deadline in order to be considered to receive settlement benefits under this Distribution Protocol;
 - (c) **Claimant** means a Class Member who submits a properly completed Claim and all required documentation to the Administrator on or before the Claims Filing Deadline;
 - (d) **Claims Filing Deadline** means 11:59pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which any part of Second Notice is first disseminated;

- (e) **Client Information** means Class Member information provided in accordance with paragraphs 6 to 7 hereof, which permits the calculation of the Class Member's Trailing Commissions Paid in accordance with this Distribution Protocol; and
- (f) **Trailing Commissions Paid** is the amount of trailing commissions paid by the Defendant to a Discount Broker in respect of the TD Mutual Fund units held by a Claimant, determined pursuant to paragraph 8 of this Distribution Protocol, which forms the basis upon which each Authorized Claimant's *pro rata* share of the Net Settlement Amount is determined.

GENERAL PRINCIPLES

- 3. The objective of this Distribution Protocol is to cost-effectively and efficiently distribute the Net Settlement Amount among Authorized Claimants, while avoiding double compensation.
- 4. The administration shall:
 - (a) implement and conform to the Settlement Agreement, orders of the Court and this Distribution Protocol;
 - (b) employ secure, paperless, web-based systems with electronic registration and record-keeping wherever possible; and
 - (c) rely on Client Information provided by Discount Brokers wherever possible.
- 5. All figures are in Canadian dollars unless otherwise denoted.

CLIENT INFORMATION

- 6. Pursuant to the terms of the Settlement Agreement, the Defendant will provide Client Information to the Administrator in respect of the TD Mutual Fund units held by Class

Members through the Defendant's affiliated Discount Broker, TD Direct Investing (a division of TD Waterhouse Canada Inc.) ("**TD Discount Broker**") and possibly other Discount Brokers.

7. To the extent it is requested from, and provided by, Discount Brokers other than the TD Discount Broker ("**External Discount Brokers**"), similar Client Information may be available to the Administrator.

CALCULATION OF A CLAIMANT'S TRAILING COMMISSIONS PAID

8. A Claimant's Trailing Commissions Paid will be calculated as follows:
 - (a) where the Administrator has been provided with Client Information that states the amount of trailing commissions received by the Claimant's Discount Broker from the Defendant in respect of the TD Mutual Fund units held by the Claimant (either in an aggregate amount or at regular intervals such that the aggregate trailing commissions received on behalf of the Class Member can be calculated), that aggregate amount shall be the Trailing Commissions Paid;
 - (b) where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker at monthly intervals, the Trailing Commissions Paid will be calculated for each month as follows:

[Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable month up to June 1, 2022] multiplied by [0.75%] multiplied by [1/12]

and the amount determined for each month over the period during which the TD Mutual Fund units were held by the Claimant will be added together;

- (c) where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker at quarterly intervals, the Trailing Commissions Paid will be calculated for each quarter as follows:

[Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable quarter up to June 1, 2022] multiplied by [0.75%] multiplied by [1/4]

and the amount determined for each quarter over the period during which the TD Mutual Fund units were held by the Claimant will be added together;

- (d) where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker at six-month intervals, the Trailing Commissions Paid will be calculated for each six-month period as follows:

[Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable six-month period up to June 1, 2022] multiplied by [0.75%] multiplied by [1/2]

and the amount determined for each six-month period over the period during which the TD Mutual Fund units were held by the Claimant will be added together;

- (e) where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker at twelve-month intervals, the Trailing Commissions Paid will be calculated for each twelve-month period as follows:

[Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable 12-month period up to June 1, 2022] multiplied by [0.75%]

and the amount determined for each 12-month period over the period during which the TD Mutual Fund units were held by the Claimant will be added together.

9. Where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker between monthly and annual intervals on a basis other than monthly, quarterly, six-monthly or annual basis as provided for in paragraphs 8(b) to 8(e), the Administrator shall calculate the Trailing Commissions Paid in a manner analogous with the formulae set out in those paragraphs.
10. Where the Administrator has been provided with a combination of the information described in paragraphs 8 and 9, the Trailing Commissions Paid shall be the sum of:
 - (a) the amount calculated in accordance with paragraph 8(a); and
 - (b) for any period for which the Administrator does not have the information necessary to perform the calculations described in paragraph 8(a), the amount calculated in accordance with paragraphs 8(b) to 8(e) and 9, giving priority to the available data over the shortest interval (using monthly data available under paragraph 8(b), then using quarterly data available under paragraph 8(c), etc.).
11. For TD Mutual Fund units held by a Claimant through a Discount Broker on or after June 1, 2022 (being the implementation date of the regulatory ban on the payment of trailing commissions to Discount Brokers), the Trailing Commissions Paid shall be deemed to be zero for that period on or after June 1, 2022.
12. Any amounts in U.S. dollars or other currency will be converted to Canadian dollars using the Bank of Canada's exchange rate as of September 11, 2024.
13. The Administrator, acting in good faith and in consultation with Class Counsel, shall not be required to undertake the calculations described in paragraphs 8(b) to 8(e) and 9 if the

time and expense of doing so would be disproportionate or unreasonable. The Administrator or Class Counsel may, but are not required to, seek directions from the Court in this regard.

THE CLAIMS PROCESS

14. To be eligible for compensation, a Class Member must submit a completed Claim to the Administrator on or before the Claims Filing Deadline.

Streamlined Claim Process Where Client Information is Provided by Discount Brokers

15. For Class Members for whom Client Information is provided to the Administrator, the following process shall be implemented:
 - (a) where an email address is available for the Class Member, the Administrator shall email the Class Member a username and password for the online claims portal established by the Administrator for the filing of Claims (“**Pre-Populated Claim Notice**”). The Pre-Populated Claim Notice will be sent by regular mail where only a mailing address is available;
 - (b) the Administrator will use the information disclosed in the Client Information to calculate the Class Member’s Trailing Commissions Paid in accordance with paragraphs 8 to 13, and this amount of Trailing Commissions Paid shall be pre-populated in the online Claim for the Class Member; and
 - (c) the Claimant may rely on the amount of the Trailing Commissions Paid that has been pre-populated in the online Claim and submit the Claim relying on that information, without the need to provide any supporting documentation for those Trailing Commissions Paid.

Full Claim Process

16. Sections 16 to 18 hereof apply to:
 - (a) Class Members to whom a Pre-Populated Claim Notice was not sent;
 - (b) Class Members who did not receive a Pre-Populated Claim Notice;
 - (c) Class Members who received a Pre-Populated Claim Notice but who wish to expand their Claim to a period not covered by the Pre-Populated Claim Notice (but only in respect of the additional period); and
 - (d) Class Members who received a Pre-Populated Claim Notice but who object to the amount of the Trailing Commissions Paid that has been pre-populated in the online Claim for the Class Member, but only if the amount of Trailing Commissions Paid would increase by at least \$500 based on the information provided by the Class Member and the calculation of their Trailing Commissions Paid in accordance with paragraphs 8 to 13.
17. Claims must be submitted through the online claims portal created by the Administrator (subject to paragraph 22) on or before the Claims Filing Deadline.
18. Claims must state the aggregate market value of all TD Mutual Fund units held by the Class Member through a Discount Broker at regular intervals ranging between monthly and annually, and must be accompanied by documentary support for the information provided in the Claim that is deemed adequate by the Administrator. The Administrator will calculate the Class Member's Trailing Commissions Paid in accordance with paragraphs 8 to 13.

Requirements for All Claims

19. Each Claim shall require the following:
 - (a) the Claimant's contact information;
 - (b) the Claimant's verification of payment details (address to send a cheque or e-transfer details);
 - (c) the Claimant's authorization to the Administrator to contact the Claimant or its representative for more information and/or to audit the Claim;
 - (d) a declaration by the Claimant that the information submitted in the Claim is true to the best of the Claimant's information and belief; and
 - (e) if the Claim is submitted by a third party on behalf of a Claimant, the third party must provide a signed statement from the Claimant at the time the Claim is filed authorizing the third party to file the Claim on the Claimant's behalf.

Default Rule That Claims Are to be Filed Online

20. The Administrator shall create an online claims portal that Class Members can access to file a Claim. The online claims portal shall contain fields that require Claimants to provide all information required in accordance with this Distribution Protocol.
21. Subject to the discretion of the Administrator, Claims may not be amended after the Claims Filing Deadline. For clarity, "placeholder claims"—meaning incomplete Claims filed solely for the purpose of meeting the Claims Filing Deadline—will not be permitted.
22. If a Class Member does not have internet access or for other good reason is unable to submit an online Claim, the Class Member may obtain a paper Claim from the Administrator and submit it via mail or email to the Administrator no later than the Claims Filing Deadline.

A paper Claim mailed to the Administrator will be considered to have been submitted on the date it is post-marked.

Assistance Filing a Claim

23. Claimants may contact the Administrator or Class Counsel, at no charge, with questions about completing a Claim.
24. Claimants may utilize third party claims services, a lawyer of their own choosing, or similar services to file a Claim. If a Claimant chooses to do so, the Claimant will be responsible for any and all fees and expenses incurred in connection with the third party claims services, lawyer of their own choosing or similar services.

QUESTRADE CLIENTS

25. The Trailing Commissions Paid shall be deemed to be zero for TD Mutual Fund units held through Questrade from 2009 onwards. For clarity, Class Members shall not receive compensation from the Net Settlement Amount for their TD Mutual Fund units held through Questrade during this period but can receive compensation for TD Mutual Fund units held through Questrade prior to 2009.

CALCULATION OF MONETARY COMPENSATION AND DISTRIBUTION

26. The Administrator shall first determine a Claimant's Trailing Commissions Paid in accordance with paragraphs 8 to 13. If the Claimant has Trailing Commissions Paid greater than zero (0), they become an Authorized Claimant. The Administrator will go on to calculate each Authorized Claimant's *pro rata* entitlement to compensation from the Net Settlement Amount. A Claimant for whom the amount of Trailing Commissions Paid is zero (0) is not eligible for payment from the Net Settlement Amount.

27. The Net Settlement Amount will be distributed to Authorized Claimants *pro rata* (proportionally) based on the value of the Authorized Claimant's Trailing Commissions Paid relative to the value of the Trailing Commissions Paid of all Authorized Claimants.
28. Compensation shall be paid to Authorized Claimants in Canadian dollars.
29. The Administrator shall not make payments to Authorized Claimants whose *pro rata* entitlement to payment from the Net Settlement Amount under this Distribution Protocol is \$25 or less. Such amounts shall, instead, be allocated *pro rata* to other Authorized Claimants with entitlements above \$25 in accordance with this Distribution Protocol.
30. The Administrator shall make payment to Authorized Claimants by cheque or e-transfer. If, for any reason, an Authorized Claimant does not accept payment within six (6) months of a cheque being issued or within one (1) month of an e-transfer being sent, the Authorized Claimant shall forfeit the right to compensation and the funds shall be redistributed in accordance with this Distribution Protocol.
31. In consultation with Class Counsel, the Administrator can seek directions from the Court with respect to the distribution of the Net Settlement Amount to ensure a fair and cost-effective distribution of the Net Settlement Amount.

SUPPLEMENTAL DISTRIBUTIONS AND *CY PRES* DISTRIBUTION

32. If, six (6) months from the date on which the Administrator distributes the Net Settlement Amount to Authorized Claimants, the Trust Account remains in a positive balance (whether due to tax refunds, uncashed cheques, or otherwise), the Administrator shall, if economically feasible, reallocate such balance among the Authorized Claimants in an equitable and economic fashion. If, in the opinion of the Administrator and Class Counsel, it is not feasible to reallocate any remaining balance among the Authorized Claimants in

an equitable and economic fashion, such balance shall be distributed *cy pres* to the Osgoode Hall Law School Investor Protection Clinic.

REVIEW OF CLAIMS, IRREGULAR CLAIMS AND APPEALS FROM DECISIONS OF THE ADMINISTRATOR

33. The claims process is intended to be expeditious, cost effective and “user friendly” to minimize the burden on Claimants. The Administrator shall, in the absence of reasonable grounds to the contrary, assume Claimants to be acting honestly and in good faith.
34. The Administrator shall use email for correspondence with Claimants to the maximum extent possible.
35. The Administrator shall review all Claims for (or implement processes to detect) deficiencies including incomplete fields, missing documentation, and duplicative or fraudulent claims.
36. The Administrator shall audit a subset of Claims for accuracy. This audit will determine whether the Claimant provided adequate proof of Trailing Commissions Paid and otherwise met the requirements of this Distribution Protocol.
37. Where a Claim contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the omissions or errors is readily available to the Administrator.
38. If, during claims processing, the Administrator finds that deficiencies exist in a Claim or other information is required, the Administrator shall notify Claimant by email or regular mail, of the deficiencies. The Administrator shall allow the Claimant thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Administrator shall reject the Claim.

39. Where the Administrator disallows a claim in its entirety, they shall send to the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice advising that the claim has been disallowed and that the Claimant may request the Administrator to reconsider its decision. For greater certainty, a Claimant is not entitled to a notice or a review where a claim is allowed but the Claimant disputes the amount of their Trailing Commissions Paid or their individual compensation.
40. Any request for reconsideration must be received by the Administrator within 45 days of the date of the notice advising of the disallowance. If no request is received within this time period, the Claimant shall be deemed to have accepted the Administrator's determination and the determination shall be final and not subject to further review by any court or other tribunal.
41. Where a Claimant files a request for reconsideration with the Administrator, the Administrator shall advise Class Counsel of the request and conduct an administrative review of the Claimant's complaint.
42. Following its determination in an administrative review, the Administrator shall advise the Claimant of its determination ("**Reconsideration Decision Notice**"). If the Administrator reverses a disallowance, the Administrator shall send the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice specifying the revision to the Administrator's disallowance.
43. The Administrator's decision on a request for reconsideration will be binding upon the Claimant, subject to the Claimant's right to appeal, as outlined below.

44. Where, following the determination of a request for reconsideration, the Administrator continues to disallow a Claimant's claim in its entirety, the Claimant may appeal the disallowance.
45. Appeals will be determined by an arbitrator appointed by the Court. The arbitrator shall apply the rules provided herein to any appeals.
46. Appeals shall be based on written submissions of the Claimant and Administrator supported by any documentation provided to the Administrator and any other material provided by the Claimant or Administrator. Notwithstanding the foregoing, the arbitrator, in his or her sole discretion, may request oral submissions to be made via videoconference or establish additional procedures to be followed during the appeal in cases where he or she determines that is warranted.
47. The arbitrator, in his or her sole discretion, may mediate the differences at any stage in the proceedings and, if mediation is unsuccessful, continue to arbitrate the appeal.
48. The costs of the arbitrator and the Administrator for a successful appeal will be paid from the Net Settlement Amount. For greater clarity, the Claimant shall have no entitlement to be repaid their costs (including any legal fees or disbursements) from a successful appeal.
49. The costs of the arbitrator and the Administrator for an unsuccessful appeal will be borne by the Claimant, subject to the discretion of the Administrator.
50. The arbitrator's decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

51. For greater certainty, there shall be no right of appeal or for reconsideration:
- (a) where a Claim is allowed but the Claimant disputes the amount of his, her or its Trailing Commissions Paid or his, her or its individual compensation;
 - (b) in respect of Claims filed after the Claims Filing Deadline; and
 - (c) in respect of Claims where the appeal or request for reconsideration, if successful, will result in the Claimant's Trailing Commissions Paid being less than \$500..

ADMINISTRATOR'S RESPONSIBILITIES AND OTHER ISSUES

Supervisory Powers of the Court

52. The Administrator shall administer the Settlement Agreement and this Distribution Protocol under the ongoing authority and supervision of the Court.
53. No action shall lie against Class Counsel or the Administrator for any decision made in the administration of the Settlement Agreement and the Distribution Protocol without an order from a Court authorizing such an action.

Investment of Settlement Funds

54. The settlement funds shall be held in a guaranteed investment vehicle, liquid market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46), held at a Canadian financial institution.

Communication, Languages and Translation

55. Where a claim is filed by a third party claims agent or lawyer on behalf of a Class Member, unless the Class Member requests otherwise, all communications shall be made with the third party claims agent or lawyer.

56. The Administrator shall establish a toll-free number for calls from Canada.
57. The Administrator shall dedicate sufficient personnel to respond to Class Members' inquiries in English or French, as the Class Member elects.
58. All written communications from the Administrator to a Class Member shall be transmitted via email if an email address has been provided, or by regular mail if an email address has not been provided.

Undeliverable Mail

59. The Administrator shall have no responsibility for locating Class Members for any mailing returned to the Administrator as undeliverable.
60. The Administrator shall have the discretion, but is not required, to reissue payments to a Class Member returned as undeliverable under such policies and procedures as the Administrator deems appropriate. Any costs associated with locating current address information for the Class Member shall be deducted from that Class Member's settlement benefits.

Reissuance of Payment

61. Where an Authorized Claimant requests payment be reissued, \$15 shall be deducted from that Authorized Claimant's settlement benefits representing the costs of reissuing payment.

Taxes

62. The Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Amount and shall pay any taxes imposed on such monies out of the Net Settlement Amount.

Reporting

63. The Administrator shall provide regular reports to Class Counsel regarding the administration.
64. The Administrator shall provide any report requested by the Court.

Assistance to the Administrator

65. The Administrator shall have the discretion to enter such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreement and this Distribution Protocol.

Confidentiality

66. All information received from the Defendant, Discount Brokers or Class Members collected, used, and retained by the Administrator for the purposes of administering the Settlement Agreement, including evaluating the Class Member's eligibility status under the Settlement Agreement, is protected under the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5. The information provided by Class Members is strictly private and confidential and will not be disclosed without the express written consent of the relevant Class Member, except in accordance with the Settlement Agreement, orders of the Court and/or this Distribution Protocol.
67. The Administrator shall preserve, in hard copy or electronic form, as the Administrator deems appropriate, the submissions relating to a Claim or Client Information, as applicable, until 90 days after the completion of the administration of the Settlement Agreement, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

Extension of Deadlines

68. By agreement between Class Counsel and the Administrator, any deadline contained in this Distribution Protocol may be extended if, in their opinion, acting reasonably, doing so will not adversely impact the efficient administration of the settlement and it is in the interest of one or more Class Members to do so.

SCHEDULE "7"
Claim Form

TD MUTUAL FUNDS CLASS ACTION

Province of Ontario / Superior Court of Justice Court File No. CV-18-595380-00CP

CLAIM FORM

I. GENERAL INSTRUCTIONS – PLEASE READ CAREFULLY

1. **This Claim Form is directed to Class Members. Class Members are all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to September 11, 2024, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.**
2. For information on how your entitlement to compensation is calculated, please see the Distribution Protocol and Guide to the Distribution Protocol available at www.trailingcommissionssettlement.com.
3. If you are NOT a Class Member, as defined in paragraph 1 above, PLEASE DO NOT submit a Claim Form.
4. To make a claim for compensation from the Settlement in the above-noted action, you must complete and sign the Claim Form. If you fail to file a properly completed Claim Form, your claim may be rejected, and you may be precluded from any recovery from the compensation fund created in connection with the Settlement.
5. **NOTE:** The Defendant, TD Asset Management Inc., stopped paying trailing commissions to Discount Brokers on June 1, 2022. Accordingly, compensation will only be paid with respect to TD Mutual Fund units held on or before May 31, 2022.
6. Submission of a Claim Form does not assure that you will share in the Net Settlement Amount.
7. For questions about this Claim Form, or if you require assistance, please contact the Administrator, Verita Global, LLC, at 1-888-XXX-XXXX or supportemail@supportemail.com.
8. **MAIL YOUR COMPLETED AND SIGNED CLAIM FORM POSTMARKED ON OR BEFORE [INSERT CLAIMS DEADLINE], ADDRESSED TO THE ADMINISTRATOR:**

**TD Mutual Funds Class Action
c/o Verita Global, LLC
P.O. Box 3355
London, ON N6A 4K3**

II. KEY DEFINITIONS

1. “TD Mutual Funds” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“Defendant”) is trustee or was trustee at any time on or prior to September 11, 2024 (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.
2. “Excluded Persons” means
 - a. the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; or
 - b. any person who validly opted out of the class action.
3. “Discount Broker” means entities providing order execution only services, including, for example, TD Direct Investing, BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia

iTRADE, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers.

III. CLAIMANT IDENTIFICATION

1. Use Part I of this form below entitled "Claimant Identification" to identify each holder of the TD Mutual Funds that are the subject of this claim. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNER(S) OR THE LEGAL REPRESENTATIVE OF SUCH OWNERS.**

IV. CLAIM FORM

1. Claim Forms must be submitted to the Administrator.
2. Claimants must provide details on the aggregate market value of all their TD Mutual Fund units held in monthly, quarterly, semi-annual or annual increments by identifying the end period date and the aggregate market value of all TD Mutual fund units held by the Claimant through a Discount Broker. Failure to report all required details may result in the rejection of a Claimant's claim.
3. Please list the aggregate market values separately and in chronological order by statement date.
4. Claimants should file a separate claim for each account through which TD Mutual Fund units were held.
5. Brokerage account statements, Holdings Summaries, or other similar alternative documentation evidencing a Claimant's mutual fund units must be submitted with the Claim Form. Failure to submit supporting documentation acceptable to the Administrator may result in the rejection of your claim.
6. The information required by the Administrator is the minimum amount of information necessary to process the claims. The Administrator may request additional information as required to efficiently and reliably calculate Claimants' potential claim. In some cases, where the Administrator cannot perform compensation calculations accurately or at a reasonable cost to the Class with the information provided by a Claimant, the Administrator may conditionally accept the claim pending receipt of additional information.

Must Be Postmarked No Later Than **DATE**

TD Mutual Funds Class Action

No. CV-18-595380-00CP

TDQ

CLAIM FORM

Please Type or Print in the Boxes Below
Do **NOT** use Red Ink, Pencil, or Staples

Must use Black or Blue Ink or your claim may be deemed deficient.

PART I: CLAIMANT IDENTIFICATION

Payee Name (as you would like the name(s) to appear on the cheque, if eligible for payment):

Payee Name (cont'd)

Payee Name (cont'd)

Telephone Number (Primary Daytime)

Telephone Number (Alternate)

Email Address

MAILING INFORMATION

Address

Address (cont'd)

City

Province

Postal Code

Province/State

Postal Code/ZIP Code

Foreign Country Name/Abbreviation

PART II. SCHEDULE OF TRANSACTIONS IN TD MUTUAL FUNDS CLASS ACTION

Please provide details on the aggregate market value of all TD Mutual Fund(s) units held in one of monthly, quarterly, semi-annual or annual increments from the beginning of your ownership through May 31, 2022:

Period Ending Date	Aggregate Market Value of TD Mutual Fund Holdings as of the Period Ending Date	Currency	Holdings (Monthly, Quarterly, Semi-Annually, Annually)	Proof Provided?
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
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MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N

If you need more space, please add additional pages in the same format.

YOU MUST READ AND SIGN THE DECLARATION ON PAGE 5. FAILURE TO SIGN THE DECLARATION MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.

PART III. DECLARATION

I (we) declare that the information on this Claim Form is true, correct and complete to the best of my (our) knowledge, information and belief.

I (we) declare that I (we) have disclosed all of my (our) TD Mutual Funds for the time periods required by this Claim Form.

I (we) also declare that I (we) am (are) not an Excluded Person(s) as defined in the General Instructions.

I (we) acknowledge and agree that the Administrator may disclose all information relating to my (our) claim to the Court and counsel to the parties in the Action, as may be necessary.

Executed this _____ day of _____ in _____
 (Month/Year) (City/State/Province/Country)

 (Sign your name here)

 (Sign your name here)

 (Type or print your name here)

 (Type or print your name here)

 (Capacity of person(s) signing, e.g., Claimant)

Proof of Authority to File Enclosed? Yes No

 (Capacity of person(s) signing, e.g., Claimant)

Proof of Authority to File Enclosed? Yes No

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above declaration.
2. Remember to attach supporting documentation, if available.
3. Do not send original share certificates; we may not be able to send them back.
4. Keep a copy of your Claim Form and all supporting documentation for your records.
5. For confirmation of receipt of your claim please contact the Claims Administrator 60 days after submission. Please note claimants are encouraged (where possible) to file via the online claim filing portal available at www.trailingcommissionssettlement.com as it provides immediate confirmation or receipt.
6. If you move, you are required to send the Administrator your new address. Failure to notify the Claims Administrator of a new address may result in your settlement benefits not being received by you.

Privacy Statement

All personal information provided by or on behalf of the Claimant to the Administrator will be handled in accordance with applicable privacy laws and the Administrator's privacy policies available at www.veritaglobal.com. Such information will be used for the purposes of administering the Settlement Agreement, including evaluation by the Administrator, Class Counsel, and Defense Counsel, of the Claimant's eligibility for compensation under the Settlement Agreement. Personal information provided by the Claimant will not be disclosed without further express written consent of the Claimant, except to Class Counsel and Defense Counsel; to appropriate persons to the extent necessary to process claims or provide benefits under the Settlement Agreement; as otherwise expressly provided in the Settlement Agreement; pursuant to court order, or as otherwise permitted or required by law; as may be reasonably necessary in order to enforce, or for Class Counsel or Defense Counsel to exercise their respective rights (including appeal rights) under the Settlement Agreement; or to the immediate family members, counsel, accountants and/or financial advisors of the Claimant (each of whom the Claimant shall instruct to maintain and honour the confidentiality of such information).

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(DISTRIBUTION ORDER)**

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275 Dundas Street, Unit 1
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Lawyers for the Plaintiff

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION
(DISMISS ORDER AND DISTRIBUTION ORDER)

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TAB 2

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION
(FEES, HONORARIUM AND FUNDING ORDER)**

The Plaintiff will make a motion to the Honourable Justice Akbarali on December 9, 2024, at 10:00am, or as soon after that time as the motion can be heard.

Capitalized terms used in this Notice of Motion that are not otherwise defined herein shall have the meaning set out in the Settlement Agreement between the Plaintiff and the Defendant dated September 11, 2024 (“**Settlement Agreement**”).

PROPOSED METHOD OF HEARING:

The motion is to be heard by video conference.

THIS MOTION IS FOR:

1. An order approving the fees, disbursements and applicable taxes of Siskinds LLP (“**Siskinds**”) and Bates Barristers P.C. (“**Bates Barristers**”), an interim payment of the Funding Commission to the Funder, the release to the Funder of the security paid by the Funder into court,

and an honorarium for the Plaintiff, substantially in the form attached hereto as **Schedule “A”**;
and

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. On April 6, 2018, this action was commenced against the Defendant, which is the trustee and manager of the TD Mutual Funds, seeking to recover damages arising from the payment of trailing commissions by the Defendant to Discount Brokers in respect of TD Mutual Funds held by the Plaintiff and other Class Members;
2. On February 27, 2020, Justice Belobaba certified this action as a class proceeding;
3. Following hard-fought, arm’s-length negotiations, the Plaintiff and the Defendant entered into the Settlement Agreement;

Class Counsel Fees and Class Counsel Disbursements

4. The Plaintiff and Siskinds entered into a Contingency Fee Retainer Agreement on October 23, 2020 (“**Retainer**”);
5. The request for Class Counsel Fees and Class Counsel Disbursements is in accordance with, or less than, the entitlements under the terms of the Retainer;
6. The Class Counsel Fees and Class Counsel Disbursements are fair and reasonable;
7. Siskinds and Bates Barristers entered into an Amended and Restated Agreement Regarding Trailers Actions on March 8, 2024 (“**Siskinds and Bates Agreement**”). The Agreement is fair and reasonable, and it should be approved;

Funding Commission and Funder's Security

8. The Funding Agreement was approved by the Court by the Funding Order on June 20, 2019;
9. It is fair and reasonable to pay an interim funding commission to the Funder as the precise amount of the approved Funding Commission will be determined at the conclusion of the claims administration process;
10. The Funder has posted security with the Accountant of the Ontario Superior Court of Justice in the aggregate amount of \$400,000;
11. After the Effective Date of the Settlement Agreement, the action will be dismissed and the security posted by the Funder no longer serves any purpose and should be released;

Honorarium

12. The proposed honorarium for the Plaintiff is warranted in the exceptional circumstances of this case, including the Plaintiff's active participation in delivering an excellent result for the Class Members;
13. Sections 12, 17, 19, 20, 21, 29, 32, 33 of the *Class Proceedings Act, 1992*, SO 1992, c 6 (prior to the amendments on October 1, 2020);
14. Rules 1.04, 2, 12 and 37 of the *Rules of Civil Procedure*, RRO 1990, Reg 194; and
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Peter Westwood sworn November 25, 2024;
2. Affidavit of Ivan Bobanovic affirmed November 28, 2024;
3. Affidavit of Charles M. Wright affirmed September 16, 2024;
4. Affidavit of Charles M. Wright affirmed November 28, 2024; and
5. Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 28, 2024

Siskinds LLP

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SCHEDULE

"A"

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, THE _____
)
JUSTICE JASMINE T. AKBARALI) DAY OF _____, _____

B E T W E E N :

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(FEES, HONORARIUM AND FUNDING ORDER)**

THIS MOTION, made by the Plaintiff and Siskinds LLP (“**Siskinds**”) for an order, *inter alia*, approving the retainer agreement between the Plaintiff and Siskinds, approving the payment of fees, disbursements and applicable taxes to Siskinds and Bates Barristers P.C. (“**Bates Barristers**”), and approving an interim payment of the Funding Commission, was heard on December 9, 2024 at 10:00am;

ON READING the materials filed by the Plaintiff and on hearing the submissions of Siskinds;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the settlement agreement between the Plaintiff

and the Defendant dated September 11, 2024 attached to this Order as **Schedule 1** apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that, pursuant to section 32 of the *Class Proceedings Act, 1992*, SO 1992, c 6, as it read immediately before section 35 of Schedule 4 to the *Smarter and Stronger Justice Act, 2020* came into force (“*CPA*”), the Contingency Fee Retainer Agreement between the Plaintiff and Siskinds dated October 23, 2020 is approved.

3. **THIS COURT ORDERS** that the Amended and Restated Agreement Regarding Trailers Actions between Bates Barristers and Siskinds dated March 8, 2024 is approved in relation to this action.

4. **THIS COURT ORDERS** that, pursuant to section 33 of the *CPA*, the fees, disbursements and applicable taxes of Siskinds and Bates Barristers are approved and payable to them as a first charge on the Settlement Amount, in the following amounts:

- (a) \$17,920,000 for legal fees;
- (b) \$2,329,600 for taxes on legal fees;
- (c) \$299,627.99 for disbursements; and
- (d) \$38,840.09 for taxes on disbursements.

5. **THIS COURT ORDERS** that an interim payment of the Funding Commission, payable to the Funder pursuant to the Funding Agreement approved by the Funding Order, in the amount of \$3,250,000 is approved.

6. **THIS COURT ORDERS** that, forthwith after the Effective Date, the Accountant of the Superior Court of Justice shall pay to the Funder, Claims Funding International, PLC, the \$400,000

in cash paid into court by the Funder pursuant to the Funding Order, together with any accrued interest earned on the amounts paid into court.

7. **THIS COURT ORDERS** that an honorarium of \$10,000 be paid to the Plaintiff Peter Westwood out of the Settlement Amount.

The Honourable Justice Jasmine T. Akbarali

SCHEDULE "1"
Settlement Agreement dated
September 11, 2024

SETTLEMENT AGREEMENT

Made as of September 11, 2024

Between

PETER WESTWOOD

(“Plaintiff”)

and

TD ASSET MANAGEMENT INC.

(“Defendant”)

SETTLEMENT AGREEMENT

TABLE OF CONTENTS

RECITALS	1
SECTION 1 - DEFINITIONS.....	3
SECTION 2 – APPROVAL AND NOTICE PROCESS	10
2.1 Commercially Reasonable Efforts	10
2.2 Motion for First Order	10
2.3 Motion for Dismiss Order and Distribution Order	10
2.4 Pre-Motion Confidentiality	11
SECTION 3 – SETTLEMENT BENEFITS	11
3.1 Payment of Settlement Amount	11
3.2 Taxes and Interest	12
SECTION 4 – NO REVERSION.....	13
4.1 No Reversion	13
SECTION 5 – OPTING-OUT.....	13
5.1 Opt-Outs.....	13
SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT.....	14
6.1 Right of Termination.....	14
6.2 If Settlement Agreement is Terminated.....	15
6.3 Return of Settlement Amount Following Termination.....	15
6.4 Survival of Provisions After Termination.....	15
SECTION 7 – RELEASES AND DISMISSALS.....	16
7.1 Release of Releasees	16
7.2 Covenant Not To Sue.....	16
7.3 No Further Claims.....	16
7.4 Dismissal of the Action.....	17
7.5 Releases a Material Term.....	17
SECTION 8 – CLAIMS AGAINST OTHER ENTITIES.....	17
8.1 Claims Against Other Entities Reserved.....	17
SECTION 9 – EFFECT OF SETTLEMENT.....	17
9.1 No Admission of Liability	17
9.2 Agreement Not Evidence	18
9.3 No Further Litigation	18

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION	18
10.1 Appointment of the Administrator.....	18
10.2 Information and Assistance from the Defendant	18
10.3 No Responsibility for Administration or Fees	19
SECTION 11 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATION EXPENSES	19
11.1 Class Counsel Fees, Class Counsel Disbursements and Administration Expenses 19	
SECTION 12 – FUNDING AND HONORARIUM.....	20
12.1 Funding and Honorarium.....	20
12.2 Release of the Funder’s Security	21
SECTION 13 – SUBSEQUENT SETTLEMENTS OF OTHER 2018 ACTIONS.....	21
13.1 Definitions.....	21
13.2 Obligations in the Event of a Subsequent Settlement.....	22
SECTION 14 – MISCELLANEOUS	24
14.1 Motions for Directions.....	24
14.2 Releasees Have No Liability for Administration.....	24
14.3 Headings, etc.....	24
14.4 Computation of Time.....	24
14.5 Ongoing Jurisdiction.....	25
14.6 Governing Law	25
14.7 Entire Agreement.....	25
14.8 Amendments	25
14.9 Binding Effect.....	26
14.10 Counterparts.....	26
14.11 Negotiated Agreement	26
14.12 Language.....	26
14.13 Recitals.....	27
14.14 Schedules	27
14.15 Acknowledgements.....	27
14.16 Authorized Signatures.....	27
14.17 Notice.....	28
14.18 Date of Execution	28

RECITALS

A. WHEREAS the Action was commenced by the original plaintiff, Gary Stenzler, in Ontario on April 6, 2018;

B. WHEREAS the Plaintiff, Peter Westwood, was added as the plaintiff in the Action in substitution for Mr. Stenzler in accordance with the Order of the Honourable Justice Belobaba dated February 5, 2021;

C. WHEREAS Class Members were provided an opportunity to opt out of the Action, the deadline for Class Members to opt out of the Action expired on April 8, 2022, and there were no opt-outs from the Action;

D. WHEREAS the Action alleges, among other things, that the Defendant paid trailing commissions out of the assets of the TD Mutual Funds to Discount Brokers, and that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to Discount Brokers were excessive, inflated and/or unearned, and further that the Defendant made misrepresentations about the nature of the trailing commission payments;

E. WHEREAS the Defendant has denied and continues to deny each and all of the claims and allegations of wrongdoing made by the Plaintiff in the Action, including any and all allegations that the Plaintiff and/or the Class Members have suffered any harm or damage whatsoever, and all claims and allegations of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action, or otherwise;

F. WHEREAS the Plaintiff, Class Counsel and the Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Defendant;

G. WHEREAS the Plaintiff and Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defences thereto, and the applicable law, that: (1) it is in the best interests of the Class to enter into this Settlement Agreement in order to avoid the

- 2 -

uncertainties of litigation and to ensure that the benefits reflected herein, including the amount to be paid by the Defendant under this Settlement Agreement, are obtained for the Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the Class;

H. WHEREAS the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Class in the Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

I. WHEREAS counsel for the Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

J. WHEREAS as a result of these settlement discussions and negotiations, the Defendant and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendant and the Plaintiff, both individually and on behalf of the Class, subject to approval of the Court;

K. WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class;

L. WHEREAS the Parties therefore wish to and hereby finally resolve, without admission of liability, the Action against the Defendant;

M. WHEREAS the Parties intend to provide a supplemental opt-out right to those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled and dismissed with prejudice,

all without costs as to the Plaintiff, the Class or the Defendant, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

(1) **2022 Actions** means, collectively, *Aggarwal v TD Asset Management Inc.*, Ontario Superior Court of Justice, Court File No. CV-22-691344-00CP, *Ciardullo v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-684723-00CP, *Ciardullo et al. v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-685386-00CP, *Yeats v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-22-690373-00CP, *Woodard v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-22-690374-00CP, *Yeats v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-22-690519-00CP, *DeJong v. RBC Global Asset Management Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-691343-00CP, and *Aizic v. Natcan Trust Company et al.*, Ontario Superior Court of Justice, Court File No. CV-23-00697428-00CP.

(2) **Action** means *Westwood v TD Asset Management Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-595380-00CP.

(3) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

(4) **Administrator** means the third party professional firm and any employees of such firm, selected at arm's-length by Class Counsel, and appointed by the Court to facilitate dissemination of notices, receive and review claims and administer the Settlement Amount in accordance with the Distribution Protocol, and report to the Parties and the Court on the administration of the Settlement.

(5) **Adverse Decision** has the meaning given to such term in Section 13.1(1)(a).

- (6) **Class** means all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to the Date of Execution, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.
- (7) **Class Counsel** means Siskinds LLP.
- (8) **Class Counsel Disbursements** means the disbursements, administration expenses, and applicable taxes incurred by Class Counsel and Bates Barristers P.C. in the prosecution of the Action, as well as any adverse costs awards issued against the Plaintiff in the Action.
- (9) **Class Counsel Fees** means the fees of Class Counsel and Bates Barristers P.C., and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Class Members to any other body or Person.
- (10) **Class Member** means a member of the Class.
- (11) **Court** means the Ontario Superior Court of Justice.
- (12) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.
- (13) **Defendant** means TD Asset Management Inc.
- (14) **Defendant Claims** means claims, including Unknown Claims, that any Releasee may have against a Releasor or Class Counsel relating to the institution, prosecution, or settlement of the Action.
- (15) **Discount Broker Actions** means, collectively, *Frayce et al. v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-638868-00CP, *Frayce v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-634551-00CP, and *Michaud et al. v BBS Securities Inc. et al.*, Supreme Court of British Columbia, Court File No. VLC-S-1912710.
- (16) **Discount Brokers** means entities providing “order-execution only services” as defined in Rule 3200 of the IIROC Dealer Member Rules or entities performing a function similar to “order-execution only services” prior to the introduction of that definition in Rule 3200 of the IIROC

Dealer Member Rules, including (without limitation) TD Direct Investing, a division of TD Waterhouse Canada Inc., a subsidiary of The Toronto-Dominion Bank, or such other discount brokerage business operated by The Toronto-Dominion Bank from time to time.

(17) ***Dismiss Order*** has the meaning given to such term in Section 2.3(1).

(18) ***Distribution Order*** has the meaning given to such term in Section 2.3(1).

(19) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Court.

(20) ***Effective Date*** means the date on which the Dismiss Order has become a Final Order.

(21) ***Excluded Persons*** means:

- (a) the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund;
- (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Belobaba dated December 14, 2021 providing for certification notice and an opt-out process; or
- (c) any Person who would otherwise be a Class Member and who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 but who validly excludes themselves from the Action in accordance with the First Order.

(22) ***Final Order*** means an order of the Court from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or a notice of appeal.

- (23) **First Notice** means the short-form, long-form and internet banner notices of the pendency of the motion for the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule E**, **Schedule F** and **Schedule G** hereto or as fixed by the Court.
- (24) **First Order** has the meaning given to such term in Section 2.2(1).
- (25) **Funder** means Claims Funding International, PLC.
- (26) **Funder's Security** means the amounts paid into Court by the Funder as security for its obligations pursuant to the Funding Order.
- (27) **Funding Agreement** means the agreement entered into on March 29, 2019 between the original plaintiff in the Action, Gary Stenzler, and the Funder for the provision of, among other things, an indemnity against adverse costs in exchange for the payment of the Funding Commission and subsequently approved by the Court pursuant to the Funding Order.
- (28) **Funding Commission** means the amount to be paid to the Funder pursuant to the Funding Agreement.
- (29) **Funding Order** means the Order of the Honourable Justice Belobaba dated June 20, 2019 approving the Funding Agreement.
- (30) **Implementation Date** means the date on which both the Dismiss Order and the Distribution Order have become Final Orders.
- (31) **Material Adverse Litigation Event** has the meaning given to such term in Section 13.1(1)(a).
- (32) **Other 2018 Actions** means, collectively, *Sage v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-18-600380-00CP, *Gilani v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-611748-00CP, *Pozgaj v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-18-605345-00CP, *Pozgaj v. Mackenzie Financial Corporation et al.*, Ontario Superior Court of Justice, Court File No. CV-18-610311-00CP, *Pozgaj v. National Bank Investments Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-18-611745-00CP, and *Ross v. RBC Global*

Asset Management Inc. et al., Ontario Superior Court of Justice, Court File No. CV-18-611743-00CP.

(33) ***Net Settlement Amount*** means the amount available in the Trust Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, the Funding Commission and any other amounts approved by the Court.

(34) ***Parties*** means the Defendant, the Plaintiff and, where necessary, the Class Members.

(35) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(36) ***Plaintiff*** means Peter Westwood.

(37) ***Plan of Notice*** means the plan for disseminating the First Notice and the Second Notice to the Class substantially in the form attached as **Schedule D** hereto or as fixed by the Court.

(38) ***Released Claims*** mean any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, lawyers' fees, disgorgement, restitution and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several, and solidarily in the Province of Quebec), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Action, or any amended complaint or pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to any concerns relating to trailing commissions paid by the Defendant to Discount Brokers in respect of the TD Mutual Funds.

(39) **Releasees** means, jointly and severally, individually and collectively, the Defendant and each of its past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing; but excluding TD Waterhouse Canada Inc.

(40) **Releasers** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers, assigns, beneficiaries, trustees, agents and legal or other representatives.

(41) **Second Notice** means the short-form, long-form and internet banner notices of the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule H, Schedule I** and **Schedule J** hereto or as fixed by the Court.

(42) **Settlement** means the settlement of the Action on the terms provided in this Settlement Agreement.

(43) **Settlement Agreement** means this agreement, including the recitals and schedules.

(44) **Settlement Amount** means seventy million two hundred and fifty thousand Canadian dollars (C\$70,250,000).

(45) **Subsequent Settlement** has the meaning given to such term in Section 13.1(1)(b).

(46) **Subsequent Settlement Amount** has the meaning given to such term in Section 13.1(1)(c).

(47) **TD Mutual Funds** means all mutual fund trusts (including, without limitation, all series of units thereof) of which the Defendant is trustee or was trustee at any time on or prior to the Date of Execution (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated,

(ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

(48) **Termination Notice** has the meaning given to such term in Section 6.1(1).

(49) **Trust Account** means a guaranteed investment product, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Class Counsel or the Administrator, once appointed, for the benefit of the Class Members, as provided for in this Settlement Agreement.

(50) **Unknown Claims** means any and all Released Claims against the Releasees which Releasers do not know or suspect to exist in his, her, or its favour as of the Effective Date, and any Defendant Claims against Releasers which Releasees do not know or suspect to exist in his, her, or its favour as of the Effective Date, which if known by the Releasers or Releasees might have affected his, her, or its decision(s) with respect to the settlement. The Releasers and Releasees may hereafter discover facts other than or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Defendant Claims. Nevertheless, the Plaintiff and the Releasees shall expressly, fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Dismiss Order (when it becomes a Final Order) shall have, fully, finally, and forever settled and released, any and all Released Claims and Defendant Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiff and the Releasees acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims and Defendant Claims was separately bargained for and was a key element of the Settlement Agreement.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.

SECTION 2 – APPROVAL AND NOTICE PROCESS

2.1 Commercially Reasonable Efforts

(1) The Parties shall use their commercially reasonable efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Action.

2.2 Motion for First Order

(1) The Plaintiff shall file a motion before the Court, as soon as practicable after the Date of Execution, for an order substantially in the form attached as **Schedule A (“First Order”)**.

(2) The Defendant will consent to the issuance of the First Order.

(3) As soon as practicable following entry of the First Order, Class Counsel shall cause the First Notice to be published and distributed in accordance with the Plan of Notice and the direction of the Court. The costs of publishing and distributing the First Notice shall be paid from the Trust Account as and when incurred.

2.3 Motion for Dismiss Order and Distribution Order

(1) The Plaintiff shall file a motion before the Court for orders substantially in the form attached as **Schedule B (“Dismiss Order”)** and **Schedule C (“Distribution Order”)** as soon as practicable after:

(a) the First Order has been granted; and

(b) the notices described in Section 2.2(3) have been published.

(2) The Defendant will consent to the issuance of the Dismiss Order. The Defendant will not oppose the issuance of the Distribution Order.

(3) At the motion for the Dismiss Order and the Distribution Order, Class Counsel shall propose for approval by the Court the Distribution Protocol or such other plan for distributing the Net Settlement Amount to the Class as Class Counsel may advise. The Distribution Protocol is the responsibility of Class Counsel and the Defendant has no involvement in its design. Accordingly, the approval of the Distribution Protocol shall be considered separately from the approval of the

Settlement and is not a condition of the approval of the Settlement itself and the dismissal of the Action as against the Defendant without costs and with prejudice in accordance with the Dismiss Order.

(4) The Defendant will take no position or make any submission to the Court concerning the Distribution Protocol, except as requested or required by the Court.

(5) The Plaintiff may make any amendments to the Distribution Protocol, the Distribution Order, the Second Notice or the Plan of Notice as it relates to the Second Notice requested or directed by the Court.

(6) As soon as practicable following the Implementation Date, Class Counsel and the Administrator shall cause the Second Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court. The costs of publishing the Second Notice shall be paid from the Trust Account as and when incurred.

2.4 Pre-Motion Confidentiality

(1) Until the motion required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), pursuant to regulatory requirements as necessary to give effect to its terms, or as otherwise required by law.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) The Defendant shall pay the Settlement Amount to Class Counsel by November 8, 2024 for deposit into the Trust Account.

(2) Payment of the amount specified in Section 3.1(1) shall be made by wire transfer. At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank,

ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest, taxes and costs.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Action, including, but not limited to, legal fees, judicial costs, taxes or costs of notice.

(6) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.

(7) Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

(8) Within thirty (30) days of the Effective Date, Class Counsel shall transfer control of the Trust Account to the Administrator, but before doing so Class Counsel may deduct and retain from the monies in the Trust Account the Class Counsel Fees and the Class Counsel Disbursements approved by the Court.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Class. The Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including

any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Administrator.

SECTION 4 – NO REVERSION

4.1 No Reversion

(1) Unless this Settlement Agreement is terminated as provided herein, the Defendant shall not be entitled to the repayment from the Plaintiff of any portion of the Settlement Amount or any interest earned on the Settlement Amount in the Trust Account. In the event this Settlement Agreement is terminated, the Defendant shall be entitled to the repayment only to the extent of and in accordance with Section 6.3(1).

SECTION 5 – OPTING-OUT

5.1 Opt-Outs

(2) An opt-out right was provided by the Order of the Honourable Justice Belobaba dated December 14, 2021. The opt-out deadline expired on April 8, 2022 pursuant to that Order. The Parties acknowledge and confirm that RicePoint Administration Inc., the notice and opt-out administrator appointed by the Court pursuant to the Order of the Honourable Justice Belobaba dated December 14, 2021, confirmed that no Person opted out of the Action.

(3) A supplemental opt-out right will be provided to those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022, as set out in the First Order.

(4) The Plaintiff, through Class Counsel, expressly waived his right to opt out of the Action.

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

(1) The Plaintiff and the Defendant shall, in their respective discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so (“**Termination Notice**”) to the other Party hereto within thirty (30) days of the date on which:

- (a) the Court declines to dismiss the Action against the Defendant;
- (b) the Court declines to approve this Settlement Agreement or any material part hereof;
- (c) the Court approves this Settlement Agreement in a materially modified form;
- (d) the Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as **Schedule B**, and such order becomes a Final Order; or
- (e) the Dismiss Order is reversed on appeal and the reversal becomes a Final Order.

(2) Except as provided for in Section 6.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by the Court with respect to the Distribution Order, Class Counsel Fees or Class Counsel Disbursements, or the Distribution Protocol, shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to approve this Settlement Agreement, which has not been decided, shall proceed; and
- (b) any order approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise.

6.3 Return of Settlement Amount Following Termination

(1) If the Settlement Agreement is terminated, Class Counsel, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, shall return to the Defendant the amount the Defendant has paid to Class Counsel, plus all accrued interest thereon and less any costs incurred with respect to the notices required by Section 2.2(3), and any costs of translation required by Section 14.12, such costs in total not to exceed one hundred and fifty thousand Canadian dollars (CAD \$150,000).

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(2), 3.2(3), 6.1, 6.2, 6.3, 6.4, 9.1 and 9.2 (the “**Surviving Provisions**”), and the recitals, definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The recitals, definitions and Schedules shall survive only for the limited purpose of the interpretation of the Surviving Provisions within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

(1) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against the Defendant; and (ii) any and all Released Claims as against all Releasees.

(2) Upon the Effective Date, subject to Section 7.2, each of the Releasers: (i) shall be deemed to have, and by operation of the Dismiss Order, shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have against the Releasees, regardless of whether such Releaser executes and delivers a proof of claim and release form; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Releasees; and (iii) agrees and covenants not to sue any of the Releasees on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Releasee related in any way to any Released Claims.

7.2 Covenant Not To Sue

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

(1) Upon the Effective Date, the Releasers shall not then or thereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this Section 7.3(1) does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions. For greater certainty and without limiting the generality of the foregoing,

the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

7.4 Dismissal of the Action

(1) Upon the Effective Date, the Action shall be dismissed with prejudice and without costs as against the Defendant.

7.5 Releases a Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8 – CLAIMS AGAINST OTHER ENTITIES

8.1 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any Person other than the Releasees.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

(1) The Plaintiff and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees or any one of them, or of the truth of any of the claims or allegations contained in the Action, or any other pleading filed by the Plaintiff.

9.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

9.3 No Further Litigation

(1) Neither Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court. For the avoidance of doubt, this Section 9.3(1) does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Appointment of the Administrator

(1) By order of the Court, the Administrator will be appointed to serve until such time as the Net Settlement Amount is distributed in accordance with this Settlement Agreement and the Distribution Protocol, on the terms and conditions and with the powers, rights, duties and responsibilities set out in this Settlement Agreement and in the Distribution Protocol.

10.2 Information and Assistance from the Defendant

(1) By order of the Court in the Distribution Order, the Defendant will deliver, or will cause to be delivered, to Class Counsel an electronic copy of the account-level or customer-level data

that the Defendant prepared for the purposes of mediation in the Action, along with the name, email address and mailing address corresponding to each account or customer identified in that data. Class Counsel shall provide this data to the Administrator upon its appointment by the Court to be used only for the purpose of Section 10.2(2).

(2) Class Counsel and the Administrator may use the information obtained under Section 10.2(1) for the purpose of administering and implementing this Settlement Agreement, the Plan of Notice and the Distribution Protocol, but Class Counsel and the Administrator shall otherwise keep confidential the information obtained under Section 10.2(1).

(3) For greater certainty, any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Settlement Agreement and the Distribution Protocol.

10.3 No Responsibility for Administration or Fees

(1) The Defendant shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account, including, but not limited to, Administration Expenses, Class Counsel Fees and Class Counsel Expenses.

SECTION 11 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATION EXPENSES

11.1 Class Counsel Fees, Class Counsel Disbursements and Administration Expenses

(1) The Defendant shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiff's or Class Members' respective lawyers, experts, advisors, agents, or representatives.

(2) Class Counsel shall pay the costs of the notices required by Sections 2.2(3) and 2.3(6) and any costs of translation required by Section 14.12 from the Trust Account, as they become due. The Releasees shall not have any responsibility for the costs of the notices or translation.

(3) Class Counsel may seek the Court's approval to pay Class Counsel Fees and Class Counsel Disbursements contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Fees and Class Counsel Disbursements shall be reimbursed and paid solely out of the Trust Account after the Effective Date. No Class Counsel Fees or Class Counsel Disbursements shall be paid from the Trust Account prior to the Effective Date.

(4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(5) The Defendant shall not be liable for any fees, disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members, or any lien of any Person on any payment to any Class Member from the Settlement Amount.

SECTION 12 – FUNDING AND HONORARIUM

12.1 Funding and Honorarium

(1) Immediately following the motion for the Dismiss Order and the Distribution Order, Class Counsel may seek orders from the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.

(2) Class Counsel are not precluded from making additional motions to the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.

(3) The Defendant acknowledges that it is not party to any motion concerning the payment of the Funding Commission or the payment of an honorarium to the Plaintiff, it will have no involvement in any such motion, and it will not take any position or make any submissions to the Court concerning any such motion, except as requested and required by the Court.

(4) Any order or proceeding relating to payment of the Funding Commission or the payment of an honorarium to the Plaintiff, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or affect or delay the Effective Date and the settlement of this Action provided herein.

12.2 Release of the Funder's Security

- (1) After the Effective Date, the Parties shall cooperate in taking all reasonably required steps to secure the prompt payment out of Court to the Funder of the Funder's Security.

SECTION 13 – SUBSEQUENT SETTLEMENTS OF OTHER 2018 ACTIONS

13.1 Definitions

- (1) For the purposes of sections 13.1 and 13.2 hereof:
 - (a) **“Material Adverse Litigation Event”** means an event that has a material adverse effect on the quantum of potential recovery and/or overall likelihood of success against the defendant(s) in the Other 2018 Action in which there is a Subsequent Settlement and meets the following criteria. This event would only occur if there is a decision of a Court in any of the Other 2018 Actions (**“Adverse Decision”**) or a change in the financial circumstances of the defendant(s) in the applicable Other 2018 Action that would cause Class Counsel, acting reasonably and in good faith, to materially alter its assessment of its client's position in settlement negotiations with the defendant(s) and (a) has a material adverse effect upon the quantum of potential recovery and/or overall likelihood of success and/or enforcement against the defendant(s), or (b) has the effect of materially decreasing the valuation of the applicable Other 2018 Action. An **“Adverse Decision”** might include, but is not limited to, a judgment dismissing a motion for certification in the applicable Other 2018 Action, a judgment that materially reduces the size of the class relative to the class proposed in the applicable Other 2018 Action, a judgment that materially reduces the class period relative to the proposed class period in the applicable Other 2018 Action, and a judgment dismissing (in whole or in part) the applicable Other 2018 Action.
 - (b) **“Subsequent Settlement”** means any settlement of any of the Other 2018 Actions;
and
 - (c) **“Subsequent Settlement Amount”** means the amount that the defendant(s) in any of the Other 2018 Actions agrees to pay pursuant to a Subsequent Settlement.

13.2 Obligations in the Event of a Subsequent Settlement

(1) Class Counsel acknowledges its professional obligations and that it intends to maximize the recovery of damages alleged in the Other 2018 Actions. As such, Class Counsel will endeavour to, acting reasonably and in good faith, negotiate terms in any Subsequent Settlement that are at least as favourable to the class members in the Other 2018 Actions than the settlement in this Settlement Agreement.

(2) As soon as and in the event that such disclosure is permitted pursuant to the terms of a Subsequent Settlement, Class Counsel shall advise the Defendant in writing of the Subsequent Settlement and the Subsequent Settlement Amount. Class Counsel shall also advise the Defendant in writing whether in Class Counsel's opinion, acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the Other 2018 Action than the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the following factors:

- (a) the Subsequent Settlement Amount, compared to the Settlement Amount under this Settlement Agreement;
- (b) the percentage equal to the Subsequent Settlement Amount as a percentage of Class Counsel's estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the defendant(s) in the applicable Other 2018 Action, compared to the percentage equal to the Settlement Amount as a percentage of Class Counsel's estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the Defendant;
- (c) differences in the facts of the applicable Other 2018 Action and this Action that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action;
- (d) whether in Class Counsel's opinion, acting reasonably and in good faith, a Material Adverse Litigation Event has occurred; and

- (e) any other factor that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action.
- (3) The Defendant acknowledges and understands that the quantification of the trailing commissions paid to Discount Brokers by the Defendant or the defendant(s) in the applicable Other 2018 Action under Section 13.2(2)(b) may not be able to be precisely and accurately determined because of, among other things, incomplete or insufficient data. In such circumstances, Class Counsel's estimate, acting reasonably, in good faith and relying on expert evidence, of the amount of the trailing commissions paid to Discount Brokers shall be accepted by the Defendant as a reasonable estimation of the trailing commissions for the purposes of sections 13.1 and 13.2.
- (4) In advising the Defendant under Section 13.2(2), Class Counsel, acting reasonably and in good faith, shall provide the Defendant with a written summary of the factors considered by Class Counsel under Sections 13.2(2)(a) to 13.2(2)(e), subject to any legal privilege owed to its client(s) in the applicable Other 2018 Action or confidentiality obligations to the defendant(s) in the applicable Other 2018 Action.
- (5) On the motion for Court approval of a Subsequent Settlement, Class Counsel shall include in the evidence filed in support of the motion a statement as to whether in Class Counsel's opinion, acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the applicable Other 2018 Action than the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the factors set out in Sections 13.2(2)(a) to 13.2(2)(e).
- (6) None of the provisions of this Section 13 shall be interpreted to impose any obligation on Class Counsel to (i) disclose any information which it would not otherwise be legally permitted to disclose in the course of seeking approval of a Subsequent Settlement, (ii) waive any settlement, litigation, solicitor-client or other privilege absent the requisite permission or instructions to do so, or (iii) do anything in the Other 2018 Actions other than comply with its professional obligations and seek to maximize the recovery of damages alleged in those proceedings.

(7) Other than what is expressly provided in this section, this section and this Settlement Agreement confer no rights of standing to the Defendant in respect of the Other 2018 Actions.

SECTION 14 – MISCELLANEOUS

14.1 Motions for Directions

(1) Class Counsel or the Defendant may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

14.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

14.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

14.4 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and

including the day on which the second event happens, including all calendar days;
and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

(1) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, the Parties and the Class Members to interpret and enforce the terms, conditions and obligations under this Settlement Agreement, the First Order, the Dismiss Order and the Distribution Order.

14.6 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

14.7 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

14.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all of the Parties, and any such modification or amendment must be approved by the Court.

14.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendant, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made by the Defendant shall be binding upon all of the Releasees.

14.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

14.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

14.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais*. Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

14.13 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

14.14 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

14.15 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

14.16 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

14.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

Anthony O'Brien
Siskinds LLP
65 Queen Street West, Suite 1155
Toronto, ON M5H 2M5
Tel: 416-594-4394
Fax: 519-672-6065
Email: anthony.obrien@siskinds.com

For the Defendant:

Shane D'Souza
McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Tel: 416-601-8196
Fax: 416-868-0673
Email: sdsouza@mccarthy.ca

14.18 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

PETER WESTWOOD on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:


Siskinds LLP

TD ASSET MANAGEMENT INC.:

Name of Authorized Signatory:

Tim WIGGAN

Signature of Authorized Signatory:


Tim Wiggan, TD Bank Group

PETER WESTWOOD on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory: Anthony O'Brien

Signature of Authorized Signatory:  Signed by:
866D01A5EEE14CD
Siskinds LLP

TD ASSET MANAGEMENT INC.:

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Tim Wiggan, TD Bank Group

SCHEDULE A
FIRST ORDER

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, amending the class definition in the Action, approving the notices of settlement approval hearing and the method of dissemination of the notices, and setting a supplemental opt-out process and deadline, was heard on *[insert]* at *[insert]*.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated *[insert]* attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the Defendant consents to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the class definition set out in paragraph 3 of the certification Order of the Honourable Justice Belobaba dated February 27, 2020 is amended, for settlement purposes, to the following (“**Class**” or “**Class Member**”):

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.

“Excluded Persons” means: (a) the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Belobaba dated December 14, 2021 providing for certification notice and an opt-out process; or (c) any Person who would otherwise be a Class Member and who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 but who validly excludes themselves from the Action in accordance with this Order.

5. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval hearing (“**First Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.

- 4 -

6. **THIS COURT ORDERS** that the plan of dissemination for the First Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the First Notice shall be disseminated in accordance with the Plan of Notice.
7. **THIS COURT ORDERS** that those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (“**Eligible Supplemental Opt-Out Party**” or “**Eligible Supplemental Opt-Out Parties**”) may opt out of this action in accordance with this Order.
8. **THIS COURT ORDERS** that the supplemental opt-out form (“**Supplemental Opt-Out Form**”), substantially in the form attached as Appendix “A” to the long-form First Notice, is hereby approved.
9. **THIS COURT ORDERS** that the deadline for Eligible Supplemental Opt-Out Parties to opt out of the action (“**Supplemental Opt-Out Deadline**”) is the date that is sixty (60) days after the day on which the First Notice is first published.
10. **THIS COURT ORDERS** that any Eligible Supplemental Opt-Out Party who opts out of this class proceeding by the Supplemental Opt-Out Deadline, by complying with the instructions set out in the long-form First Notice and fully completing a Supplemental Opt-Out Form, shall not be a Class Member on and after the date that such person opts out of the class proceeding.
11. **THIS COURT ORDERS** that, subject only to the opt-out right provided to Eligible Supplemental Opt-Out Parties in accordance with paragraphs 7 to 10 of this Order, the period for Class Members to opt out of this action expired as of April 8, 2022.
12. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection to, or comment on, the settlement, the Distribution Protocol or the request for approval of

- 5 -

Class Counsel Fees and Class Counsel Disbursements shall deliver a written statement to Class Counsel, at the address indicated in the First Notice, no later than 21 calendar days prior to the hearing of the settlement approval motion.

The Honourable Justice Akbarali

SCHEDULE B
DISMISS ORDER

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the settlement between the Plaintiff and the Defendant and dismissing this action as against the Defendant, was heard on *[insert]* at *[insert]*.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated *[insert]* attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been *[insert]* written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Defendant consents to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
5. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
6. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
7. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 8, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

9. **THIS COURT ORDERS** that, upon the Effective Date, each Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors, covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
10. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions.
11. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
12. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement or with respect to the Distribution Protocol, including administration, investment, or distribution of the Trust Account.

13. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed as against the Defendant, without costs and with prejudice.

The Honourable Justice Akbarali

SCHEDULE C
DISTRIBUTION ORDER

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
 JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the notices of settlement approval and the method of dissemination of the notices, approving the Distribution Protocol, and approving the claims process, was heard on *[insert]* at *[insert]*.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated *[insert]* attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Distribution Protocol has passed and there have been *[insert]* written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Defendant does not oppose this Order;

AND ON BEING ADVISED that [*insert*] consents to being appointed as the Administrator;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval (“**Second Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.
5. **THIS COURT ORDERS** that the plan of dissemination for the Second Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the Second Notice shall be disseminated in accordance with the Plan of Notice.
6. **THIS COURT ORDERS** that the Distribution Protocol, substantially in the form attached hereto as **Schedule 6**, is approved for the purposes of distributing the Net Settlement Amount.
7. **THIS COURT ORDERS** that the form and content of the claim form (“**Claim Form**”), substantially in the form attached hereto as **Schedule 7**, is approved.
8. **THIS COURT ORDERS** that [*insert*] is appointed as the Administrator.

9. **THIS COURT ORDERS** that to be entitled to participate in a distribution from the Net Settlement Amount, a Class Member must:
- (a) submit a properly completed Claim Form to the Administrator, using the online claim portal established by the Administrator or by submitting a paper Claim Form by mail or courier to the Administrator, postmarked or received by the Administrator on or before 11:59pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which any part of Part 2 of the Plan of Notice is first completed (“**Claims Bar Deadline**”);
 - (b) submit, together with the Claim Form, any supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Administrator; and
 - (c) otherwise comply with the instructions set out in the Claim Form.
10. **THIS COURT ORDERS** that the Defendant shall forthwith deliver, or cause to be delivered, to Class Counsel the data required under section 10.2(1) of the Settlement Agreement.

The Honourable Justice Akbarali

SCHEDULE D
PLAN OF NOTICE

PLAN OF NOTICE

Unless otherwise modified herein, the definitions set out in the Settlement Agreement dated August [insert], 2024 apply.

Part 1: First Notice will be disseminated (or caused to be disseminated) by Class Counsel as follows:

1. Short-form notice (substantially in the form attached as **Schedule E** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule F** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule G** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, no less than 30 days and no more than 35 days; and

- (b) published as a 12-day sponsored news link on Stockhouse.

Part 2: Second Notice will be disseminated by Class Counsel and the Administrator as follows:

1. Short-form notice (substantially in the form attached as **Schedule H** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule I** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule J** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days; and
 - (b) published as a 12-day sponsored news link on Stockhouse.

SCHEDULE E
SHORT-FORM FIRST NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Proposed Settlement and Supplemental Opt-Out Deadline for Certain Class Members

Have you held units of a TD mutual fund through a discount broker?

A class action settlement has been reached with TD Asset Management Inc. for C\$70.25 million to resolve the claims asserted on behalf of all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD mutual fund trust through a discount broker (“Class”).

The settlement is subject to approval by the Ontario Superior Court of Justice. A settlement approval hearing has been set for *[insert]*. At that same hearing, the Court will also consider a motion to approve Class Counsel’s fees, which will not exceed *[insert]*, plus reimbursement for expenses incurred by Class Counsel in the litigation, plus taxes on the fees and disbursements.

If you wish to object to the settlement, Class Counsel’s fees and disbursements, or the Distribution Protocol that sets out the manner in which the net settlement funds will be distributed among eligible Class Members, you must do so by *[insert]*.

If you are a Class Member who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (meaning you never held units of a TD Mutual Fund through a Discount Broker on or before April 9, 2022), and you do not want to be part of the class action and be bound by the terms of the settlement, you must opt out by submitting a supplemental opt-out form by *[insert opt-out deadline]*.

For other Class Members (meaning you held units of a TD Mutual Fund through a Discount Broker on or before April 8, 2022, regardless of whether you continued to hold those units after April 8, 2022), your opt-out period expired on April 8, 2022 and there is no further right to opt out of the class action.

For important information regarding the class action, to determine if you are a member of the Class, to obtain a copy of the supplemental opt-out form, to object, and to understand your legal rights:

- View the long-form notice at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>
- Call Class Counsel at *[insert]* or toll-free *[insert]*

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a

discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit [*insert relevant website*] for more information about that settlement.

The publication of this notice was authorized by the Superior Court of Justice of the Province of Ontario

SCHEDULE F
LONG-FORM FIRST NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Proposed Settlement and Supplemental Opt-Out Deadline

Read this notice carefully as it may affect your legal rights

THIS NOTICE IS TO:

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a discount broker, except for the Excluded Persons (“**Class**” and “**Class Members**”).

In the above class definition:

“**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“**Defendant**”) is trustee or was trustee at any time on or prior to *[insert Date of Execution]* (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

“**Excluded Persons**” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who validly opted or opts out of the class action.

Examples of discount brokers are BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, TD Direct Investing, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

A settlement (“**Settlement**”) has been reached in the class action in the Ontario Superior Court of Justice against the Defendant (“**Action**”). This notice contains important details about the Settlement.

IMPORTANT DEADLINES

Objection Deadline (to object to the Settlement, Class Counsel’s fee request or the Distribution Protocol): *[insert]*

Supplemental Opt-Out Deadline (for those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 to exclude themselves from the Action and the settlement): *[insert]*

IMPORTANT NOTE ABOUT SEPARATE SETTLEMENT FOR NON-DISCOUNT BROKER HOLDERS OF TD MUTUAL FUNDS

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to discount brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to discount brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments.

The Defendant has denied these allegations and continues to deny all allegations.

On behalf of the Class, the Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

THE CERTIFICATION ORDER

By Orders dated February 27, 2020 and February 5, 2021, the Ontario Superior Court of Justice (“**Court**”) certified the Action as a class proceeding under the Ontario *Class Proceedings Act, 1992*. The Court appointed the plaintiff, Peter Westwood, as the representative plaintiff for the Class (“**Plaintiff**”).

By Order dated [insert], the class definition was amended to the definition noted above.

THE SETTLEMENT

On [insert], the Plaintiff and the Defendant executed a Settlement Agreement (“**Settlement Agreement**”), which is subject to approval by the Court. The Settlement Agreement provides for the payment of C\$70,250,000 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members.

The Settlement Agreement provides that if approved by the Court, the claims of Class Members asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed.

The Settlement Agreement is not an admission of liability, wrongdoing, or fault on the part of the Defendant, which has denied, and continues to deny, the allegations against it.

SETTLEMENT APPROVAL HEARING

The Settlement Agreement is conditional on approval by the Court. The Settlement Agreement will be approved if the Court determines that it is fair and reasonable and in the best interests of the Class Members to approve it.

The Court will hear a motion for approval of the Settlement on [insert] at [insert].

CLASS COUNSEL’S FEES AND OTHER EXPENSES

The Plaintiff and the Class are represented by Siskinds LLP (“**Class Counsel**”). Class Counsel are conducting the Action on a contingent fee basis. On [insert], Class Counsel will make a motion to the Court for approval of their fees and the fees of Bates Barristers P.C., which in the aggregate will not exceed [insert], plus reimbursement for expenses incurred in the litigation in the maximum amount of [insert], plus applicable taxes on the fees and expenses.

A funding agreement between the Plaintiff and Claims Funding International, PLC (“**Funder**”) was previously approved by the Court on June 20, 2019. Amounts owing to the Funder will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

On *[insert]*, Class Counsel will also seek the Court’s approval for the payment of an honorarium to the Plaintiff in the maximum amount of *[insert]*. Class Counsel will be requesting that the honorarium be deducted directly from the Settlement Amount.

The fees of the claims administrator, together with any other costs relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”), will also be paid from the Settlement Amount.

CLASS MEMBERS’ ENTITLEMENT TO COMPENSATION

If the Settlement Agreement is approved by the Court, the Settlement Amount, after deduction of Class Counsel’s fees and expenses, amounts payable to the Funder, any approved honorarium for the Plaintiff and Administration Expenses (“**Net Settlement Amount**”) will be distributed to Class Members who file valid and timely claims in accordance with the Distribution Protocol.

On *[insert]*, the Plaintiff will seek the Court’s approval of the Distribution Protocol and a process by which Class Members can claim compensation from the Net Settlement Amount.

The proposed Distribution Protocol will provide that in order to determine the individual entitlements of Class Members who make claims, the losses of each claimant will be calculated in accordance with the Distribution Protocol. Once the notional losses of all Class Members who have filed valid claims have been calculated, the Net Settlement Amount will be allocated to those Class Members in proportion to their percentage of the total notional losses calculated for all valid claims filed. Because the Net Settlement Amount will be distributed *pro rata*, it is not possible to estimate the individual recovery of any individual Class Member until all the claims have been received and reviewed.

The approval of the Settlement Agreement is not contingent on the approval of the Distribution Protocol. The Court may still approve the Settlement Agreement even if it does not approve the Distribution Protocol or approves amendments to the Distribution Protocol.

PARTICIPATION IN THE APPROVAL MOTION

The following material will be posted on Class Counsel’s website dedicated to the Action (<https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>) on or before the dates set out below:

1. the Settlement Agreement (posted prior to or at the time of the publication of this notice);
2. the proposed Distribution Protocol (posted by *[6 weeks prior to settlement approval hearing]*); and
3. a summary of the basis upon which Class Counsel recommends the Settlement and Distribution Protocol (posted by *[6 weeks prior to settlement approval hearing]*).

Class Members who wish to comment on, or make an objection to, the approval of the Settlement Agreement, the Distribution Protocol or the fees and disbursements of Class Counsel shall deliver (by email, mail or courier) a written submission to Class Counsel, to be postmarked or received no later than *[insert]*, at the following email address or mailing address:

Zohra Bhimani
 Siskinds LLP
 275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
 Tel: 226-330-0409
 Email: zohra.bhimani@siskinds.com

Any objections delivered by that date will be filed with the Court.

Class Members may attend at the hearing whether or not they deliver an objection. Class Members who wish to have a lawyer speak on their behalf at the hearing may retain one to do so at their own expense.

SUPPLEMENTAL OPT-OUT RIGHT FOR CERTAIN CLASS MEMBERS

If you are a Class Member who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (meaning you never held units of a TD Mutual Fund through a Discount Broker on or before April 9, 2022), and you do not want to be bound by the outcome of the Action, including the terms of the Settlement if approved, you must “opt out”, meaning that you must exclude yourself from the Action in accordance with the following procedure.

Such class Members who do not opt out will (i) be entitled to participate in the Settlement; (ii) be bound by the terms of the Settlement; and (iii) not be permitted to bring other legal proceedings in relation to the matters alleged in the Action against the Defendant, or any person released by the approved Settlement. Conversely, if you opt out of the Action, you will not be able to make a claim to receive compensation from the Settlement Amount but will maintain the right to pursue your own claim against the Defendant relating to the matters alleged in the Action.

If you wish to opt out of the Action, you must complete, sign and return (by email, mail or courier) the supplemental opt-out form provided at Appendix “A” hereto to Class Counsel.

In order for your opt-out to be valid, your complete and signed supplemental opt-out form must be postmarked or received by Class Counsel by no later than **[insert]**.

For other Class Members (meaning you held units of a TD Mutual Fund through a Discount Broker on or before April 8, 2022, regardless of whether you continued to hold those units after April 8, 2022), your opt-out period expired on April 8, 2022 and there is no further right to opt out of the Action.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information in both languages are available on Class Counsel’s website at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>.

Questions relating to the Action may be directed to Class Counsel using the contact details above.

Si vous avez besoin d’aide en français, veuillez contacter les avocats du groupe en utilisant les coordonnées ci-dessus et nous dirigerons votre demande vers une personne appropriée.

The publication of this notice was authorized by the Ontario Superior Court of Justice

(PLEASE CIRCLE THE APPROPRIATE LANGUAGE)

I believe that **I am / the organization that I represent is** a member of the Class in the Action.

I believe that **I am not / the organization that I represent is not** amongst the persons and entities excluded from the Action.

I understand that by opting out of the Action, **I will not be eligible / the organization that I represent will not be eligible** for any benefit that may be available to the Class upon resolution of this matter, if and when such resolution may occur.

I, _____ (print your full name), **OPT OUT FROM THE ACTION** and wish to be excluded from this class action.

I wish to opt out from this class action for the following reason(s) (*optional*):

I, _____ (print your full name), **CERTIFY** that the information provided herein is complete and true.

Date

Signature

In order to validly opt out, you must complete and send this Supplemental Opt-Out Form by no later than [DATE] to:

Zohra Bhimani
Siskinds LLP
275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
Email: zohra.bhimani@siskinds.com

SCHEDULE G
INTERNET BANNER FIRST NOTICE

DRAFT TEXT (subject to design)

Have you held units of a TD mutual fund
through a discount broker?

You may be affected by a proposed class
action settlement.

Click to learn your legal rights.

[Link to <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>]

SCHEDULE H
SHORT-FORM SECOND NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Have you held units of a TD mutual fund through a discount broker?

The Ontario Superior Court of Justice approved a class action settlement with TD Asset Management Inc. for C\$70.25 million to resolve the claims asserted on behalf of all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD mutual fund trust through a discount broker ("Class").

This settlement is not an admission of liability or wrongdoing by the Defendant. It is an efficient compromise between the parties of their disputed positions.

To be eligible to obtain compensation from the settlement, Class Members must submit a Claim Form to the Administrator at *[insert Administrator website]* by *[insert]*.

For important information regarding the class action, to determine if you are a member of the Class, and to learn how to make a claim for compensation:

- View the long-form notice at *[insert Administrator website]*
- Contact the Administrator at:

[insert Administrator contact details]

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

The publication of this notice was authorized by the Superior Court of Justice of the Province of Ontario

SCHEDULE I
LONG-FORM SECOND NOTICE

DRAFT TEXT (subject to design)

[NTD: The language of the notice regarding claims for compensation is subject to settling the terms of the proposed Distribution Protocol, as the notice language will need to line up with the terms of the proposed Distribution Protocol.]

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Read this notice carefully as it may affect your legal rights

THIS NOTICE IS TO:

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to [insert Date of Execution], units of a TD Mutual Fund through a discount broker, except for the Excluded Persons (“**Class**” and “**Class Members**”).

In the above class definition:

“**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“**Defendant**”) is trustee or was trustee at any time on or prior to [insert Date of Execution] (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

“**Excluded Persons**” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who previously opted out of the class action.

Examples of discount brokers are BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, TD Direct Investing, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

A settlement (“**Settlement**”) has been reached in the class action against the Defendant (“**Action**”). The Ontario Superior Court of Justice (“**Court**”) has approved the Settlement. This notice contains important details about the Settlement and how to submit a claim for compensation from the Settlement.

IMPORTANT DEADLINE TO FILE CLAIM FOR COMPENSATION

Claims Bar Deadline (to file a claim for compensation): [insert]

IMPORTANT NOTE ABOUT SEPARATE SETTLEMENT FOR NON-DISCOUNT BROKER HOLDERS OF TD MUTUAL FUNDS

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit [insert relevant website] for more information about that settlement.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to discount brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to discount brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments.

The Defendant has denied these allegations and continues to deny all allegations.

On behalf of the Class, the Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

SETTLEMENT APPROVAL, FEE APPROVAL AND OTHER MATTERS

On [insert], the Court approved the Settlement. The Settlement provides for the payment of C\$70,250,000 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members.

The Settlement Agreement provides that the claims of Class Members (who did not opt out) asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed.

The Settlement Agreement is not an admission of liability, wrongdoing or fault on the part of the Defendant, which has denied, and continues to deny, the allegations against it.

The Court awarded Siskinds LLP (“**Class Counsel**”) and Bates Barristers P.C. total legal fees in the amount of [insert], plus disbursements of [insert], plus applicable taxes on the fees and expenses. As is customary in such cases, Class Counsel conducted the class action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. The approved fees and disbursements will be deducted from the Settlement Amount before it is distributed to Class Members.

A funding agreement between the Plaintiff and Claims Funding International, PLC (“**Funder**”) was previously approved by the Court on June 20, 2019. Amounts owing to the Funder will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

The Court also approved the payment of an honorarium to the Plaintiff in the amount of [insert]. The honorarium will be deducted from the Settlement Amount before it is distributed to Class Members.

Expenses incurred or payable relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”) will also be paid from the Settlement Amount before it is distributed to Class Members.

The Settlement Amount includes all legal fees, the Funder’s commission, taxes and administrative expenses.

CLAIMS ADMINISTRATOR

The Court has appointed [insert] as the claims administrator for the Settlement (“**Administrator**”). The Administrator will, among other things: (i) receive and process claims for compensation from the Settlement; (ii) determine Class Members’ eligibility for and entitlement to compensation pursuant to the Distribution Protocol; (iii) communicate with Class Members regarding claims for compensation; and (iv) manage and distribute the Settlement Amount in accordance with the Settlement Agreement and the orders of the Court.

The Administrator can be contacted at:

[insert Administrator full contact details]

CLASS MEMBERS' ENTITLEMENT TO COMPENSATION

The Settlement Amount, after deduction of Class Counsel's fees and expenses, amounts payable to the Funder, the approved honorarium for the Plaintiff and Administration Expenses ("**Net Settlement Amount**") will be distributed to Class Members in accordance with the Distribution Protocol approved by the Court.

Class Members will be eligible for compensation if they submit a completed Claim Form, including any supporting documentation, with the Administrator, and their claim satisfies the criteria set out in the Distribution Protocol.

To be eligible for compensation, Class Members must submit their Claim Form **no later than [insert]** ("**Claims Bar Deadline**").

The most efficient way to file a claim is to visit the Administrator's website at [insert] and file an online claim. The website provides step by step instructions on how to file a claim. In order to verify claims, the Administrator will require supporting documentation, including brokerage statements or confirmations evidencing the claimed transactions. Accordingly, Class Members should visit the Administrator's site as soon as possible so that they have time to obtain the required documentation prior to the Claims Bar Deadline.

While online claims are recommended and preferred, the Administrator will also accept Claim Forms filed by mail or courier. To obtain a copy of the Claim Form, Class Members may contact the Administrator to have one sent by email or regular mail. Claim Forms sent by mail or courier should be sent to the Administrator using the contact details above.

If you have questions about how to complete or file a Claim Form, the documentation required to support a claim, or whether you are a Class Member, please contact the Administrator.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information in both languages are available on the Administrator's website at [insert].

Questions relating to the Action may be directed to the Administrator using the contact details above or Class Counsel:

Zohra Bhimani
Siskinds LLP
275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
Tel: 226-330-0409
Email: zohra.bhimani@siskinds.com

Si vous avez besoin d'aide en français, veuillez contacter les avocats du groupe en utilisant les coordonnées ci-dessus et nous dirigerons votre demande vers une personne appropriée.

The publication of this notice was authorized by the Ontario Superior Court of Justice

SCHEDULE J
INTERNET BANNER SECOND NOTICE

DRAFT TEXT (subject to design)

Have you held units of a TD mutual fund
through a discount broker?

You may be eligible to obtain compensation
from a class action settlement.

Click to learn your legal rights.

[Link to Administrator website]

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER
**(CLASS COUNSEL FEES AND DISBURSEMENTS,
HONORARIUM, INTERIM FUNDING COMMISSION AND
RELEASE OF FUNDER'S SECURITY)**

Siskinds LLP

Barristers & Solicitors
275 Dundas Street, Unit 1
P.O. Box 2520
London, ON N6B 3L1

Michael G. Robb (LSO#: 45787G)

Garett Hunter (LSO#: 71800D)

Gigi Pao (LSO#: 80151M)

Tel: 519.660.2121

Fax: 519.672.6065

65 Queen Street West, Suite 1155

Toronto, ON M5H 2M53

Anthony O'Brien (LSO#: 56129U)

Tel: 416.594.4394

Fax: 416.362.2610

Lawyers for the Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION
(CLASS COUNSEL FEES AND DISBURSEMENTS,
HONORARIUM, INTERIM FUNDING COMMISSION AND
RELEASE OF FUNDER'S SECURITY)**

Siskinds LLP

Barristers & Solicitors
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Lawyers for the Plaintiff

TAB 3

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF PETER WESTWOOD
(Sworn November 25, 2024)**

I, Peter Westwood, of the City of North Vancouver, in the Province of British Columbia,
MAKE OATH AND SAY:

INTRODUCTION

1. I am the Plaintiff in this action (“**Action**”). Accordingly, I have personal knowledge of the matters to which I hereinafter depose. Where that knowledge is based on information I have obtained from others, I have so indicated and believe that information to be true.
2. In swearing this affidavit it is not my intention, nor is it the intention of my lawyers, Siskinds LLP (“**Siskinds**”), to waive solicitor-client privilege, litigation privilege or any other privilege of any kind.

RETAINER

3. I retained Siskinds to act as my counsel in this case on October 23, 2020. A copy of my Contingency Fee Retainer Agreement is attached as **Exhibit “A”** to this affidavit

(“**Retainer**”). I am advised by Anthony O’Brien of Siskinds and believe that certain parts of the Retainer attached to this affidavit have been redacted because they contain potentially sensitive information.

4. The Retainer provides for Siskinds to act on a contingency (“no win, no fee”) basis. I would not have been able to retain Siskinds on an hourly fee basis for this case.
5. This Action had been ongoing since April 2018 at the time I retained Siskinds. The Action had been certified as a class proceeding in February 2020. On February 5, 2021, by order of Justice Belobaba, I was added as the Plaintiff to this Action in substitution for the original Plaintiff (Gary Stenzler) and was appointed representative plaintiff for the class.
6. I agreed to step in and act as the representative plaintiff to ensure that the Action could continue and to protect the interests of the class members.
7. I am a class member under the class definition certified by this Court on February 27, 2020 and I am a class member under the slightly modified class definition set out in the Settlement Agreement dated September 11, 2024 (“**Settlement Agreement**”).

MY ONGOING INVOLVEMENT IN THE ACTION

8. Since retaining Siskinds in October 2020, I have been in regular contact with Anthony O’Brien and other Siskinds lawyers by phone, video-conference, email and in person. They have provided me with details regarding the status of the Action, steps taken and to be taken and the reasons for those steps, provided key documents, made recommendations to me, and sought my instructions in relation to material matters.

9. I have been actively involved in the litigation. Among other things:
- (a) I swore an affidavit in support of my motion to be added as the Plaintiff to this Action in substitution for the original Plaintiff;
 - (b) I searched for and collected my potentially relevant documents for the discovery process in the Action;
 - (c) I reviewed and provided input on my mediation brief, including the statement of position element;
 - (d) I reviewed and provided comments on the Defendant's mediation brief;
 - (e) I independently prepared and provided my financial evaluation of the monetary range for settlement negotiations;
 - (f) I reviewed and provided comments and instructions on the monetary range to be followed in settlement negotiations;
 - (g) I communicated with Siskinds and provided input and instructions for the formal mediations in the Action;
 - (h) I virtually attended a mediation on May 3, 2023;
 - (i) I communicated with Siskinds and provided input and instructions while settlement negotiations were ongoing outside the formal mediations that were held;
 - (j) I kept informed about developments in the related class actions against discount brokers and against the fund trustees on behalf of non-discount broker investors;
 - (k) I reviewed the Settlement Agreement and provided my comments;
 - (l) I reviewed a draft of the Distribution Protocol and provided my comments; and

(m) I am making this affidavit in support of approval of the Settlement Agreement, counsel fees and disbursements, and other matters.

10. Since retaining Siskinds in October 2020, I have kept a detailed log of the time that I have devoted to the Action. As of the date of this affidavit, the log shows that I have dedicated 59 hours to the prosecution of this Action on behalf of the class members.

SETTLEMENT AGREEMENT AND DISTRIBUTION PROTOCOL

11. The first mediation in this Action occurred in November of 2022. That was unsuccessful in resolving the Action. However, some progress was made and negotiations continued afterwards. This included a number of formal mediation sessions, as well as ongoing informal negotiations.

12. I understand that the length of ongoing negotiations reflected the complex nature of this litigation, including the existence of related actions.

13. Following the lengthy negotiation process, an agreement in principle was reached to settle this Action for \$70,250,000 (“**Settlement Amount**”) and the parties commenced the negotiation of formal settlement documents.

14. I am advised by Mr. O’Brien and believe that the formal terms of settlement are set out in the Settlement Agreement. I have reviewed the Settlement Agreement and discussed the terms of the settlement with Mr. O’Brien and other Siskinds lawyers. I approve the terms of the Settlement Agreement, which seem reasonable from my point of view.

15. I understand from speaking with Mr. O’Brien that payments will be distributed to class members from the Settlement Amount (after payment of counsel fees and disbursements

and taxes on those fees and disbursements, claims administration expenses, the litigation funder's commission and any honorarium that the Court might award me).

16. I understand that a Distribution Protocol has been developed to distribute the net settlement amount in a manner that reflects class members' relative losses. I have reviewed the draft Distribution Protocol. I am not a lawyer or expert in these matters, but that approach seems fair.
17. In my opinion, people who have lost money should be compensated where it is economical to do that, and with the Settlement Amount available I believe we will be able to do so.
18. I feel I have contributed a lot to the class members by having helped achieve this.
19. I further understand that it is proposed that any money that may be left after payments to class members that is uneconomical to distribute directly to them will be paid to Osgoode Hall Law School Investor Protection Clinic (if approved by this Court). This makes sense to me, and it is better than any money going back to the Defendant.
20. I understand that the Settlement Agreement must be approved by the Court. I have instructed my lawyers to seek approval of the Settlement Agreement.
21. Even if the Settlement Agreement is not approved, I am prepared to continue acting as a representative plaintiff.

COUNSEL FEES AND DISBURSEMENTS

22. This lawsuit was done on a contingency fee basis, and I knew that Siskinds would not be paid for fees and disbursements (beyond the limited disbursement funding provided by the litigation funder) unless the Action was successful. The contingency fee percentage provided for under the Retainer is 28% of the Settlement Amount.

23. I understand from Mr. O'Brien that Siskinds will request a fee of \$17,920,000 (plus applicable taxes), which equates to approximately 25.5% of the Settlement Amount.
24. I understand that Siskinds has agreed to forgo \$1,750,000 it could otherwise request under the terms of the Retainer for the benefit of the class and that this amount will be available for distribution to the class.
25. I understand from Mr. O'Brien that a portion of the Court-approved fees will be paid to Bates Barristers P.C. ("**Bates Barristers**"), which was, until 2020, co-counsel with Siskinds for the class in the Action. I understand that the amount payable to Bates Barristers will come out of the \$17,920,000 fee and is not in addition to that amount.
26. I understand that the amount available for distribution to class members will be increased by "costs" of \$85,000 that were awarded in my favour during the litigation and interest earned on the Settlement Amount after it was paid by the Defendant, and that Siskinds is not applying its contingency fee percentage to those additional amounts.
27. I am advised by Mr. O'Brien that, as of November 22, 2024, disbursements of \$297,416.20 (plus applicable taxes) have been incurred by Siskinds for which reimbursement will be sought. I am advised by Mr. O'Brien that disbursements of \$2,211.79 (plus applicable taxes) have been incurred by Bates Barristers for which reimbursement will be sought. I understand that Siskinds will incur some additional disbursements between November 22, 2024 and the date the Court is asked to approve the disbursements and that they will be requesting payment of those additional disbursements.

28. The fee and disbursement request is consistent with the terms of the Retainer I signed, and I support the approval of this fee and disbursement request.

Sworn remotely by Peter Westwood of the City of North Vancouver, in the Province of British Columbia, before me at the City of London, in the Province of Ontario on November 25, 2024, in accordance with O Reg 431/20, Administering Oath or Declaration Remotely.



Garrett M. Hunter, ESO#: 71800D,
Commissioner for Taking Affidavits
(or as may be)

Peter Westwood

This is Exhibit "A" mentioned and referred to in Affidavit of Peter Westwood SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 25th day of November, 2024. The affiant was located in the City of North Vancouver, Province of British Columbia, and the commissioner, Garrett M. Hunter, was located in the City of London, Province of Ontario.



Garrett M. Hunter, LSO#: 71800D,
A Commissioner for Taking Affidavits
in the Province of Ontario

CONTINGENCY FEE RETAINER AGREEMENT**BETWEEN:****PETER WESTWOOD**herein called the “**Client**”**- and -****SISKINDS LLP**herein called “**Siskinds**” or “**Class Counsel**”

WHEREAS, the proceeding in the Ontario Superior Court of Justice under Court File No. CV-18-595380-00CP against TD Asset Management Inc. has been certified by the Court as a class proceeding and the intention is for the Client to represent the class as the representative plaintiff;

AND WHEREAS, the purpose of the following agreement is to set out the rights and terms of the relationship between the Client and Class Counsel in respect of the class proceeding, including as to cost indemnification, Class Counsel fees, and any termination of the relationship;

AND WHEREAS, a litigation funding agreement has been entered into with a third-party litigation funder for the proceeding, and such agreement has been approved by the Court, and the Client has reviewed its contents;

1. The Client hereby retains the services of Siskinds to prosecute a class proceeding pursuant to the Ontario *Class Proceedings Act, 1992* (the “**CPA**”). The class proceeding is brought on the Client’s behalf, as representative plaintiff, and on behalf of a class of persons with similar or related claims relating to trailing commissions paid in respect of mutual funds held through discount brokerages (the “**Class**”) against TD Asset Management Inc. and related or affiliated entities.
2. The Client has authorized Class Counsel to add the Client as the representative plaintiff (in substitution for the current representative plaintiff) in the proceeding in the Ontario Superior Court of Justice under Court File No. CV-18-595380-00CP against TD Asset Management Inc.
3. The Client authorizes Class Counsel, when acting on the Client’s behalf as representative plaintiff, to take such actions and conduct the class proceeding as they consider appropriate. However, the Client retains the right to make all critical decisions regarding the conduct of the class proceeding, but always with a view to the best interests of the Class. If the Client makes a decision regarding the conduct of the class proceeding that Class Counsel do not consider to be in the best interests of the Class, Class Counsel will seek directions from the Ontario Superior Court of Justice (the “**Court**”) on the issue.

4. The Client acknowledges that the amount of a reasonable settlement or judgment in this class proceeding will depend on a number of factors, including the amount of the trailing commissions paid to discount brokerages in respect of the defendants' mutual funds, the strength of the evidence that is obtained in the course of investigating and prosecuting the proceedings, and the defendants' capacity to pay.

Costs and Funding

5. At any step in the proceeding, the Court has the discretion to order a costs award on a partial or substantial indemnity scale. A costs award usually follows the party that is successful on that step of the proceeding. The Client understands that the payment of costs awards is subject to paragraphs 6 to 8 of this Retainer Agreement.
6. The Client and Class Counsel understand that in the event of an adverse costs award (*i.e.*, if the Court orders that the Client is required to pay some or all of the costs incurred by the defendants in this proceeding) while Class Counsel are counsel of record, Class Counsel (jointly and severally) will indemnify the Client against any such award and the Client will not personally have to satisfy such an award. In no circumstances will the Client be required to pay any funds, including costs awards, while Class Counsel are counsel of record.
7. The Client acknowledges and agrees that Class Counsel has, on behalf of the Client and the Class, obtained an indemnification against adverse costs and funding of disbursements from a third party litigation funder. The Client agrees that he shall adopt and abide by the terms of the funding agreement with that funder as they relate to him. The Client acknowledges that the term "Lawyers" in the funding agreement now exclusively refers to Siskinds.
8. The Client acknowledges and agrees that, in the event of a favourable costs award (*i.e.*, if the Court orders that the defendants are required to pay some or all of the costs incurred by the Client and/or Class in this proceeding), Class Counsel can retain such costs awards to finance already incurred disbursements, ongoing disbursements incurred for the benefit of the Class and/or any future adverse costs award(s). The Client understands that, in the event that Class Counsel retains a costs award for these purposes, Class Counsel will account for this on any subsequent fee application. In the event that some or all of the costs award is not retained by Class Counsel in accordance with this provision, the costs award will be held in trust for the benefit of the Class, pending the direction of the Court.

Taxes and Disbursements

9. Harmonized Sales Tax ("H.S.T."), currently at the rate of 13%, is payable on legal fees and disbursements. H.S.T. and any other taxes payable will be paid at the prevailing rate.
10. The Client has been advised and understands that disbursements will include the costs of obtaining financial reports, expert opinions and such items as postage, courier charges, long distance telephone charges, photocopies, fax charges, and all costs associated with the proceeding such as court filing fees, service of documents, court reporter fees and transcript costs, as well as other disbursements such as experts' fees to quantify economic losses, mediation costs, travel and accommodation costs, and other miscellaneous expenses,

including the taxes thereon. Disbursements also include the reasonable out-of-pocket expenses incurred by the Client in connection with the class proceeding, which Siskinds agrees to pay or reimburse promptly after the Client provides a receipt or other document showing that the expense has been incurred by the Client.

11. The Client understands that the *CPA* permits Class Counsel to charge interest on disbursements incurred, as totaled at the end of each six-month period following the date of this Retainer Agreement. Interest charged on disbursements will be calculated in accordance with the post-judgment interest rate set by the Ministry of the Attorney General, as required under the *Courts of Justice Act* and the *Publication of Postjudgment and Prejudgment Interest Rates* regulation.
12. The Client confirms that Class Counsel are authorized to retain such experts as may be advisable to advance the proceeding.

Contingency Fee

13. The Client understands and agrees that the proceedings are to be pursued on a contingency basis such that legal fees, disbursements and applicable taxes will be payable only in the event of a success.
14. The Client understands that, under the *CPA*, “success” in a class proceeding includes:
 - (a) judgment on the common issues in favour of some or all class members; and
 - (b) a settlement, including a partial settlement with less than all named defendants where the proceeding is ongoing against non-settling defendants, that benefits one or more class members.
15. The Client understands that the legal fee will be calculated based on all benefits obtained for the Class by settlement, judgment or award, including, without limitation, settlement funds, damages award, reimbursement of trust funds, pre-judgment interest and/or post-judgment interest, plus interest earned on such benefits while held in trust (collectively, the “**Amount Recovered**”). The Amount Recovered does not include the defendants’ contribution to costs.
16. It is the instruction of the Client and the intention of Class Counsel to apply for an order requiring the fees and disbursements, as calculated and determined herein, to be paid by the defendants or other proper entities or parties the court may order in order to protect the Class Members and other unitholders in the mutual funds involved in these actions from any adverse economic consequences from this class proceeding. In the event that the court does not make such an order, the provisions of this agreement shall nonetheless apply.
17. If for any reason, the Court orders amounts to be reimbursed to the mutual funds involved in these actions, the Client undertakes and agrees to consent to an order declaring that Class Counsel shall be entitled to a charge on the mutual funds involved in these actions with respect to fees and disbursements recoverable under this agreement pursuant to the *Solicitors Act*, RSO 1990, c S.15, section 34(1) and other applicable law.

18. The Client understands that legal fees will be charged on a percentage basis at the rate of thirty-three percent (33%) of the Amount Recovered, including a fee of 5% which shall compensate Class Counsel for assuming the indemnity described in paragraph 6.
19. The Client understands that, as outside funding or indemnification for adverse costs as contemplated by paragraph 7 herein has been obtained, the contingency fee charged shall be reduced to twenty eight percent (28%) of the Amount Recovered.
20. In the event that no recovery is made in the litigation, the Client understands that the Client will not be indebted to Class Counsel for the fees, disbursements and applicable taxes incurred by Class Counsel in prosecuting this proceeding. In the event that a recovery is made in the proceeding, any fees, disbursements and applicable taxes or any other costs incurred by Class Counsel will be paid solely from the recovery in the class proceeding.
21. The Client confirms that:
 - (a) The Client has been provided with options for retaining Class Counsel other than by way of a contingency fee agreement, including retaining Class Counsel by way of an hourly-rate retainer – the lawyers who will be working on this proceeding have hourly rates ranging from \$175.00/hour to \$700.00/hour, or higher;
 - (b) The Client has been advised that hourly rates may vary among solicitors and the Client can speak with other solicitors to compare rates;
 - (c) The Client has chosen to retain Class Counsel by way of a contingency fee agreement, as outlined in this Retainer Agreement;
 - (d) The Client understands that the work done in the class proceeding will be conducted by the retained firms, Class Counsel, and not by particular lawyers; and
 - (e) The Client understands that all usual protections and controls on retainer agreements between a solicitor and a client, as defined by the Law Society of Upper Canada and the common law, apply to this Retainer Agreement.
22. The Client understands that Class Counsel may associate with other law firms in Canada and/or the United States in the prosecution of this proceeding, including, without limitation, Siskinds' Quebec affiliate law firm, Siskinds Desmeules. The Client understands that no additional fees will be payable by the Class to such firms in respect of their assistance in the prosecution of this proceeding.
23. The Client has been advised and understands that Court proceedings are expensive and uncertain and that in spite of Class Counsel's efforts on the Client's behalf, there is no assurance or guarantee of the outcome, the length of time it may take, or the potential costs involved. All estimates of fees and disbursements the Client has been or may be given, whether orally or in writing, are estimates only.

Example Fee and Funding Commission Calculation

24. In the event of a success, Class Counsel's fee will be calculated by multiplying the Amount Recovered by 28% (pursuant to paragraph 19 above), plus disbursements, interest on disbursements and applicable taxes. The Funder's Commission will be calculated in accordance with the funding agreement, which involves multiplying the "Net Resolution Sum" by 7%, subject to the "Commission Cap" if applicable. The "Net Resolution Sum" is the "Resolution Sum" less any Funding paid by the Funder, Class Counsel fees and disbursements and "Administration Expenses". By way of example:

If the proceeding settles for damages and prejudgment interest of [REDACTED], the defendants pay an additional [REDACTED] in partial indemnity costs, and Class Counsel have incurred [REDACTED] in disbursements, for which the interest is [REDACTED]. Class Counsel's fee will be calculated as follows:


Class Counsel's fee [REDACTED] x 28%)	[REDACTED]
H.S.T. on fee ([REDACTED] x 13%)	[REDACTED]
Disbursements	[REDACTED]
Interest on disbursements	[REDACTED]
H.S.T. on disbursements ([REDACTED] x 13%)	[REDACTED]
Total account	[REDACTED]

For the purposes of calculating the Funder's Commission in this example, assume the Funder has not paid any Funding, and the Administrative Expenses are [REDACTED]. The Funder's Commission would be calculated as follows:

Net Resolution Sum ([REDACTED] - [REDACTED])	[REDACTED]
Funder's Commission [REDACTED] x 7%)	[REDACTED]

In this example, the net recovery would be calculated as follows:

Total settlement (inclusive of damages, pre-judgment interest, interest while held in trust, and defendant's contribution to costs)	[REDACTED]
Class Counsel's account	[REDACTED]
Administration Expenses	[REDACTED]
Funder's Commission	[REDACTED]

Net proceeds of settlement (to be distributed among class members)	
--	---

Payment of Fees, Disbursements and Taxes

25. The Client understands that in the event of success, Class Counsel are entitled to be reimbursed for payments made in respect of disbursements or taxes during the course of the class proceeding, as a first charge on any funds received as a result of a judgment or settlement in the class proceeding.
26. The Client further understands that, if the class proceeding is successful, the legal fees, disbursements and applicable taxes of Class Counsel are subject to the approval of the Court. The Client understands that, in considering Class Counsel's fee request, the Court may consider, among other things, this Retainer Agreement, the results achieved in the proceeding, the risk assumed by Class Counsel in prosecuting the proceeding, and the time and expense incurred by Class Counsel in prosecuting the proceeding.
27. Class Counsel undertake to seek Court approval of legal fees, disbursements and taxes in accordance with the terms of this Retainer Agreement. If the Client is concerned that the fees sought for approval are not in compliance with this Retainer Agreement, the Client is entitled to raise this objection at the fee approval hearing.
28. The Client understands that Class Counsel will not recover more in fees than the Class recovers as damages or receives by way of settlement. Notwithstanding the foregoing, the Client understands that in the event of a success, subject to Court approval, Class Counsel can retain settlement funds to finance already incurred disbursements, ongoing disbursements incurred for the benefit of the Class and/or any future adverse costs awards.

Payment of Settlement or Judgment Monies

29. The Client authorizes and directs that settlement funds or amounts awarded by judgment be payable to Class Counsel, In Trust, and that the funds will be applied to fees, H.S.T. and disbursements owing to Class Counsel, prior to the funds being distributed to the Class.

Discontinuance, Abandonment and Settlement of the Class Proceeding

30. The Client understands that, in accordance with the *CPA*, the discontinuance, abandonment and settlement of a class proceeding requires approval of the Court, on such terms as the Court considers appropriate.

Termination of Relationship

31. The Client understands that, if either the Client or Class Counsel wishes to terminate this relationship, the Client or Class Counsel will forthwith move before the Court for directions. The Client acknowledges that Class Counsel have incurred and will continue to incur significant time and financial risk in the prosecution of this proceeding. Accordingly, if the Client engages another solicitor to act in this proceeding or if the Client otherwise terminates this Retainer Agreement and the proceeding is successful, Class

Counsel will be paid fees, disbursements, applicable taxes and interest in accordance with the terms of this Retainer Agreement. In the event of termination, the Client will consent to an order to remove Class Counsel as solicitors of record.

32. If the Client desires to withdraw as representative plaintiff in this action, the Client shall notify Class Counsel of the same, in writing. The Client understands that a Court order might be required in order to withdraw as representative plaintiff and, if so, the Client will take no steps to withdraw, other than seeking such an order, until such an order is finally granted.

Privacy & Protection of Information

33. The Client understands and agrees that, in having retained Class Counsel to provide the legal services described in this Retainer Agreement, the collection, use, retention, and disclosure of personal and other sensitive information may be required in order to fulfill those services and related obligations. The Client has read the Siskinds Privacy Policy respecting the management of personal and sensitive information and understands that such information will be used by Class Counsel for only the purposes set out in this Retainer Agreement and for no other purpose without express written consent pursuant to the Privacy Policy.
34. Regarding electronic transmission of personal information (i.e. email), the Client acknowledges that there is no method of transmitting or storing data that is completely secure and that, notwithstanding the technological safeguards used by Class Counsel, all Internet transmissions are susceptible to possible loss, misrouting, interception and misuse. Notwithstanding the potential risk, the Client specifically consents to Class Counsel transmitting the Client's personal information electronically.
35. The Client understands that, as of July 1, 2014, legislation requires Class Counsel to obtain consent to send certain electronic communications. By initialing below, the Client specifically consents and agrees herein to receive electronic communications from Class Counsel, including, without limitation, emails regarding class actions, practice updates, newsletters, publications, event invitations or other information that may be of interest. Class Counsel are committed to sending only relevant and useful information to the Client. The Client understands that consent to receive these electronic communications may be withdrawn at any time by contacting Class Counsel at subscriptions@siskinds.com or by mail.

Initial: 

Conflicts of Interest

36. The Client understands that because Siskinds is a large multi-disciplinary firm, it frequently represents clients that are competitors, customers or suppliers, or have other commercial, and at times legal, interests that are adverse to one another. It is possible that during or following the time Siskinds represents the Client, another existing or new client may have disputes with the Client that are unrelated to the matters that Siskinds is handling or has handled for the Client. The Client understands that Siskinds will represent the Client in this and future matters on the understanding that Siskinds represents other clients and may

accept engagements from them on other matters that may be adverse to the Client. However, the Client understands that Siskinds will not act for another client against the Client's interests if the matter is substantially related to any matter in which Siskinds and is representing the Client. If the foregoing conditions are satisfied, the Client agrees that Siskinds may undertake the adverse representation and that all conflict of interest issues will be deemed to have been waived by the Client.

Enforcement

37. This Retainer Agreement shall not confer any rights or remedies upon any person other than the parties hereto and their respective heirs, executors, successors and permitted assigns.
38. This agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together constitute one and the same instrument.
39. The Client understands that this Retainer Agreement replaces any former agreement(s) that the Client may have previously executed (including all other previous Contingency Fee Retainer Agreements) and shall remain in full force and effect until cancelled in writing.

The Client accepts the terms and conditions as outlined herein, and acknowledges receipt of a copy of this Retainer Agreement.

DATED at North Vancouver, British Columbia, this 23 day of October, 2020

awestwood

WITNESS

Name:

C. ANN WESTWOOD

Peter Westwood

Peter Westwood
339-6th Street E
North Vancouver, BC V7L 1P7
Tel: 604-986-8956

DATED at _____, Ontario, this ____ day of _____, 2020

Jin Zhi Pao

WITNESS

Name: Jin-Zhi Pao

Anthony O'Brien
Siskinds LLP
302-100 Lombard Street
Toronto, ON M4C 1M3
Tel: 416-594-4394

WESTWOOD v. TD ASSET MANAGEMENT INC.

Court File No. CV-18-595380-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF PETER WESTWOOD

Siskinds LLP

Barristers & Solicitors
275 Dundas Street, Unit 1
P.O. Box 2520
London, ON N6B 3L1

Michael G. Robb (LSO#: 45787G)
Garett Hunter (LSO#: 71800D)
Tel: 519.660.2121
Fax: 519.6726065

65 Queen Street West, Suite 1155
Toronto, ON M5H 2M53

Anthony O'Brien (LSO#: 56129U)
Tel: 416.594.4394
Fax: 416.362.2610

Lawyers for the Plaintiff

TAB 4

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF IVAN BOBANOVIC
(Affirmed November 28, 2024)**

I, Ivan Bobanovic, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

INTRODUCTION

1. I am Vice-President at RicePoint Administration Inc., doing business as Verita Global (“**Verita**”), the proposed claims administrator for the settlement of this action. I have knowledge of the matters I depose to herein. Where that knowledge is based on information I have obtained from others, I have indicated the source of that information and believe it to be true.
2. For the purposes of affirming this affidavit, I have reviewed the Settlement Agreement dated September 11, 2024 (“**Settlement Agreement**”) and the schedules thereto, including the Plan of Notice. I have also reviewed the proposed Distribution Protocol.
3. Capitalized terms not defined herein have the meaning given to those terms in the Settlement Agreement and the proposed Distribution Protocol.

4. I understand that this affidavit will be used in support of the Plaintiff's motions for orders, among others:

- (a) appointing Verita as Administrator;
- (b) approving the proposed Distribution Protocol;
- (c) approving the form and content of the Claim Form and prescribing a process for Class Members to file claims for compensation; and
- (d) approving the form, content and method of disseminating Second Notice.

5. In this affidavit, I record:

- (a) background on Verita and its experience;
- (b) the steps Verita took to disseminate First Notice;
- (c) the estimated costs of disseminating Second Notice;
- (d) my opinion on the efficacy of the Distribution Protocol and Verita's ability to implement the Distribution Protocol in accordance with its terms;
- (e) a description of the claims procedure and the ability of Verita to process the data provided by the Defendant;
- (f) Verita's management of the Settlement Amount and the Trust Account; and
- (g) my agreement on behalf of Verita to accept the appointment as Administrator.

BACKGROUND ON VERITA AND ITS EXPERIENCE

7. Verita provides notice and administrative services for class action administrations in Canada. Its bilingual services include the design and implementation of notice plans, the

processing of claims, acting as an escrow agent for settlement funds, calculating class member entitlements, distributing funds and, finally, reporting to the Court and class counsel on select aspects of the administration.

8. In June 2024, three global legal service providers — Kurtzman Carson Consultants LLC (KCC), Gilardi & Co., and RicePoint Administration Inc. (“**RicePoint**”) — joined together under the newly-created Verita brand. Verita offers a comprehensive range of legal, fiduciary, and administrative services to professionals around the world. It brings together experts in class action, corporate restructuring, trustee and fiduciary services, and mass tort.

9. I have been with RicePoint (and now Verita) for 14 years: six years in a variety of roles managing notice and administration campaigns, four years as Director of Operations, and four years as Vice-President. In forming the opinions expressed below, I draw from my class action administration experience, as well as my educational experience. I have an Honors Specialization Bachelor of Arts Degree from Western University.

10. Over the last approximately 21 years, RicePoint (and now Verita) has administered over 200 settlements of varying size and complexity and distributed more than \$5 billion in settlement funds. Those settlements related to securities, price-fixing, medical, consumer and employment matters.

11. Under my management and/or direction, RicePoint (and now Verita) calculated class members’ monetary entitlement and distributed money to class members in the following securities and consumer class actions:

- (a) *Auto parts price fixing litigation* (\$25.5 million) (“**Auto Parts Class Action**”);
- (b) *Marcantonio v TVI Pacific Inc.* (\$2.1 million);

- (c) *OMERS & McCann v CP Ships Ltd., et al.* (\$12.8 million);
- (d) *O'Neil v SunOpta Inc., et al.* (\$11.25 million USD);
- (e) *Metzler v Gildan Activewear Inc., et al.* (\$22.5 million USD);
- (f) *Devlin et al. v Canadian Superior Energy Inc., and Challenger Energy Corp., et al.* (\$5.2 million USD);
- (g) *Wheeler v. China National Petroleum Corp., et al.* (\$9.99 million);
- (h) *Nor-Dor Developments Limited v Redline Communications Group Inc., et al.* (\$3.6 million);
- (i) *McKenna v Gammon Gold Inc., et al.* (\$13.25 million);
- (j) *Dobbie v Arctic Glacier Income Fund et al.* (\$13.75 million);
- (k) *Sorensen v EasyHome Ltd., et al.* (\$2.25 million);
- (l) *Zaniewicz v Zungui Haixi Corp., et al.* (\$10.85 million);
- (m) *Haase v Reliq Health Technologies Inc., et al.* (\$2.5 million);
- (n) *Snelgrove v Cathay Forest Products Corp., et al.*;
- (o) *Philpott v Stonehaven Exploration Ltd. (formerly Donnybrook Energy Inc.), et al.* (\$5.5 million); and
- (p) *Donohue v Baja Mining Corp., et al.* (\$11 million).

12. Members of the Verita team who will be responsible for the administration of the proposed Settlement, including Kurt Elgie, have been responsible (jointly or working with others) for the

administration, calculation of class member entitlement and distribution of money in several other securities and consumer class actions, including:

- (a) *The Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund v SNC-Lavalin Group Inc. et al.* (\$110 million);
- (b) *AFA Livförsäkringsaktiebolag et al. v Agnico Eagle Mines Limited et al.* (\$17 million);
- (c) *McDonald v Home Capital Group Inc., et al.* (\$29.5 million);
- (d) *Gérald Léveillé v Avantage Link Inc. (Jitec Inc.), et al.* (\$9.85 million);
- (e) *Paul Carter, F. Philip Wilhelmsen v. Asia Packaging Group Inc., et al.* (\$1.39 million);
- (f) *R. Charles Allen v Aspen Group Resources Corporation, et al.* (\$3.285 million);
- (g) *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, et al. v Ernst & Young LLP re Sino-Forest* (\$117 million);
- (h) *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, et al. v Credit Suisse Securities Canada, et al. re Sino-Forest* (\$32.5 million);
- (i) *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, et al. v BDO Limited re Sino-Forest* (\$8.774 million); and
- (j) *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, et al. v W Judson Martin, et al. re Sino-Forest* (\$75 million).

NOTICE

First Notice

13. Verita caused First Notice to be disseminated as follows:
- (a) on October 9, 2024, short-form notice was issued as a news release nationwide across Canada NewsWire, in English and French;
 - (b) on October 12, 2024, short-form notice was published in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (c) on October 9, 2024, short-form notice was published in the business section of *La Presse*, in French;
 - (d) on October 9, 2024, short-form notice was sent electronically to 13 Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members;
 - (e) the internet banner was published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French starting on October 9, 2024 and ending November 7, 2024; and
 - (f) from October 10, 2024 to October 21, 2024, the internet banner was published as a sponsored news link on Stockhouse.

Cost of Notice

14. The cost to disseminate First Notice was \$24,882 (not including taxes).

15. The Plan of Notice calls for Second Notice to be disseminated in the same manner as First Notice. I estimate that the cost of disseminating Second Notice under the Plan of Notice will be the same as the cost to disseminate First Notice.

PROPOSED DISTRIBUTION PROTOCOL

16. I have reviewed the proposed Distribution Protocol and provided my input to Garrett Hunter and Anthony O'Brien of Siskinds on the content of the Distribution Protocol.

17. Based on my experience, it is my view that the Distribution Protocol will provide an efficient and effective methodology for distributing the Net Settlement Amount to Class Members. We have significant experience and expertise doing the types of calculations included in the Distribution Protocol. The Distribution Protocol has proof of transaction requirements (or enables Claimants to rely on information provided by the Defendant) that will allow legitimate claims to be successfully made while providing reasonable assurance that illegitimate claims will be rejected.

18. I anticipate, subject to the occurrence of unforeseen events, that the first distribution of settlement funds to Class Members will occur by the end of 2025 or early 2026 and a residual distribution (if any) will be made sometime thereafter.

THE CLAIMS PROCEDURE

19. Verita has prepared an online claims portal and paper claim form for Class Members to make claims for compensation from the Net Settlement Amount. The online claims portal will be available at www.trailingcommissionssettlement.com. The online claims portal and paper claim form will be available to Class Members in both English and French. Class Members will be

required to make a claim through the online claims portal unless they do not have internet access or have another good reason for being unable to submit an online form.

20. The online claims portal will provide two ways for Class Members to submit a claim for compensation. *First*, a streamlined process is available where we have been provided with information from the Defendant that allows the Administrator to contact the Class Member and calculate the Class Member's Trailing Commissions Paid (as that term is defined in the Distribution Protocol). *Second*, there is a full claims process for Class Members when that information is not available from the Defendant.

The Streamlined Process

(i) Class Member Information from the Defendant

21. I understand from my review of the Settlement Agreement, Distribution Protocol and discussions with Messrs. Hunter and O'Brien of Siskinds that data will be provided to Verita from the Defendant related to Class Members who are customers of TDAM's affiliated Discount Broker, TD Direct Investing ("TDDI").

22. I understand from Messrs. Hunter and O'Brien of Siskinds and Melissa Holbrook of KSV Advisory and believe that the data set is very large. It consists of two types of data that can be used to determine a Class Member's Trailing Commissions Paid as follows:

- (a) **Data Set A:** Provides trailing commissions paid by TDAM to TDDI on a monthly basis by account number from 2013 to 2021. For example, for December 2014 there is information on trailing commissions paid for 132,002 unique account numbers; and

- (b) **Data Set B:** A data set providing monthly account balances by TDDI account number from November 2002 to December 2022.

23. I understand from Messrs. Hunter and O'Brien of Siskinds and Melissa Holbrook of KSV Advisory that TDAM will also separately provide data sets that can be used to match Class Members' name and contact information to the account information provided in Data Sets A and B. There are some limitations in the information available. Name and contact information is not available for each account number provided in Data Sets A and B. I also believe that given the length of time for which data is available that the contact information for some Class Members may be stale.

24. Verita will process the data provided so that:

- (a) **Data Set A:** monthly trailing commission paid data is aggregated into a single amount per account to determine aggregate Trailing Commissions Paid pursuant to paragraph 8(a) of the Distribution Protocol. Class Member name and contact information will be matched to account number(s) to determine the Trailing Commissions Paid per Class Member according to the information available in Data Set A; and
- (b) **Data Set B:** for each account, the available account balances will be used to calculate Trailing Commissions Paid pursuant to the formula in sections 8(b)-(e) of the Distribution Protocol. Class Member name and contact information will be matched to account number(s) to determine the Trailing Commissions Paid per Class Member according to the information available in Data Set B.

25. There will be overlap in the data provided for Class Members in Data Set A and Data Set B. Pursuant to the priority scheme established under the Distribution Protocol, we will first use the information in Data Set A and use Data Set B to supplement the missing time periods from Data Set A (e.g. 2002-2013 and January 2022 to June 2022).

26. At Verita, we have an internal team that will complete the processing and management tasks described above. Our team of dedicated data experts have decades of collective experience handling millions of records across hundreds of cases. They excel at receiving, cleaning, and transforming complex source data into manageable formats tailored to each case's unique requirements. We have engaged in similar large scale data management tasks in the context of complex settlement administrations. Two recent examples include:

- (a) *Auto Parts Class Action*: 50 million unique records from Original Equipment Manufacturers spread across approximately 50 separate data files; and
- (b) *Desjardins data breach settlement*: approximately 4 million unique records for impacted users.

27. I am confident that we will be able to complete the data management and processing tasks required for this administration.

28. Verita has developed a comprehensive global information and cybersecurity framework aligned with the following certifications. These designations validate that an organization adheres to globally accepted standards of quality assurance and guarantee a certain standard of security. They include:

- (a) National Institute of Standards and Technology (NIST): a widely adopted framework with standards, guidelines, and best practices for managing cyber

security risks;

- (b) ISO 27001: information security standard created by the International Organization for Standardization (ISO), which provides a framework and guidelines for establishing, implementing and managing an information security management system (“ISMS”); and,
- (c) ISO 27002: designed to work with ISO 27001, it provides the requirements for maintaining and improving an ISMS, focused on cybersecurity.

29. I also note that we have privacy measures in place in order to ensure the safety of the Class Member information, including, but not limited to:

- (a) information and systems only available to authorized people with a justified business need;
- (b) information is not disclosed or modified without authorization;
- (c) information is available when required by relevant business processes;
- (d) applicable regulatory, legislative and client requirements are met;
- (e) information security training is available to all employees;
- (f) breaches of security and suspected weaknesses are reported, investigated, documented and resolved; and
- (g) employees have access to relevant additional standards and guidelines that support this policy.

(ii) The pre-populated online portal

30. Class Members will be able rely on our calculation of their Trailing Commissions Paid from the data provided by the Defendant (as described in the preceding section) when making a claim for compensation.

31. To facilitate this process, we will use the contact information obtained to send such Class Members an email or letter (if no email is available) with a username and password to log-on to the online claims portal we create. This email or letter will be sent, to the extent possible, at the same time Second Notice is first disseminated so that Class Members will have the maximum amount of time to make a claim. The date Second Notice is first disseminated triggers the start of the 180-day claims period.

32. When a Class Member logs into the online portal using the username and password we send them, the online claims portal will be pre-populated with information on the Trailing Commissions Paid by the Class Member based on the information provided by TDAM. The Class Member will be able to rely on that pre-populated information to submit a claim for compensation without any further supporting documentation. A Class Member may provide supplemental information using the full claims process described below if they disagree with the pre-populated Trailing Commissions Paid or wish to expand their claim for a period not covered by their pre-populated information.

33. That online portal will be similar in form (but not substance) to the online portal Verita/Ricepoint created for the Auto Parts Class Action administration. Attached as **Exhibit "A"** are screen shots from a sample claim from the online portal for the Auto Parts Class Action administration.

34. There are substantial benefits to the administration and Class Members from the streamlined process, including that it will:

- (a) increase the efficiency of the administration by limiting the number of claims that will require an eyes on review of supporting documentation;
- (b) make the process for making a claim significantly easier for those Class Members who have pre-populated information that they are entitled to rely on; and
- (c) bring the fact of the Settlement Agreement and claims process to the attention of a substantial number of Class Members by sending them (via email or mail) the letter with the username and password to make a claim for settlement benefits through the online claims portal.

The Full Claims Process

35. All other Class Members will be able to use the online portal to make a claim (or, if applicable, a paper version of the claim form). Class Members will be required to provide the information requested in the claim form and to provide documentation to support their claim. Supporting documentation can include monthly or annual account statements showing the value of TD Mutual Fund units held by a Class Member through a Discount Broker. We will take a flexible approach to the proof of claim requirements.

36. Attached hereto as **Exhibit “B”** is a copy of the paper claim form for the Full Claims Process. The online claims portal’s Full Claims Process will substantially replicate the paper claim form. It will have the same informational requirements and similar instructions for Class Members. Class Members using the Streamlined Process will have the benefit of the prepopulated

information on Trailing Commissions Paid, as described above, so the informational requirements and instructions will differ from the paper claim form, though there will be common elements.

THE SETTLEMENT AMOUNT AND THE TRUST ACCOUNT

37. I understand that under the terms of the Settlement Agreement the Trust Account will be transferred to the control of Verita if it is appointed as Administrator within 30 days of the Effective Date of the Settlement Agreement. In accordance with the Settlement Agreement, the Settlement Amount will be invested in a Schedule 1 Canadian Bank. It will earn interest for the benefit of Class Members at the Bank of Canada rate plus 10 basis points (one basis point is equivalent to 0.01%).

VERITA'S AGREEMENT TO ACT AS THE ADMINISTRATOR

38. Subject to approval of the Court, I confirm that Verita consents to its appointment as Administrator.

Sworn remotely by Ivan Bobanovic as stated being located in the City of London, in the Province of Ontario, before me at the City of London, in the Province of Ontario on November 28, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits,
Garrett M. Hunter



Ivan Bobanovic

This is Exhibit "A" mentioned and referred to in Affidavit of Ivan Bobanovic AFFIRMED BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. Both the affiant and the commissioner, Garrett M. Hunter, were located in the City of London, Province of Ontario.

A handwritten signature in black ink that reads "Garrett Hunter". The signature is written in a cursive style with a large initial 'G' and a distinct 'H'.

Garrett M. Hunter, LSO#: 71800D,
A Commissioner for Taking Affidavits
in the Province of Ontario

Login

CLAIM ID

10024587

PIN

86811982

Login

ONLINE CLAIM FORM: <https://www.ricepointconnect.com/autopartsettlement/en-us>

CLAIM ID: 12345678
PIN: 87654321

Claim ID (8-digits)

PIN (8-digits)



CONTACT INFORMATION

FIRST NAME

LAST NAME

FORMER LAST NAME (IF APPLICABLE)

TELEPHONE

EMAIL

CONFIRM EMAIL ADDRESS

MAILING ADDRESS

PLEASE CHECK IF A NON-CANADIAN ADDRESS

ADDRESS 1

ADDRESS 2

CITY

PROVINCE/TERRITORY

End User Claim Form



PURCHASE INFORMATION

The below chart summarizes your purchases of "Affected Vehicles". "Affected Vehicles" means new automotive vehicles purchased and/or leased during the relevant period from the [Automakers](#). The relevant period varies depending on the brand/manufacturer. See FAQ 9 [here](#) for more information.

No wrongdoing is alleged as against any Automakers. They are not defendants in the class actions.

Subject to court order, all valid claims will receive a minimum payment of \$25 per claim, NOT per vehicle. *Claimants with a small number of purchases may not receive more than the [minimum payment](#).*

Manufacturer	Year	Model	Purchased or Leased?	Purchased After Lease Ended?	Purchased New or Used?
Chrysler	2010	DODGE NITRO SXT	Select ▼	Select ▼	Select ▼
Chrysler	2009	DODGE CHALLENGE	Select ▼	Select ▼	Select ▼

Do you have additional purchases to add?

YES NO

◀ PREVIOUS

CONTINUE ▶

End User Claim Form



PAYMENT INFORMATION

Approved claims will be paid via e-Transfer.

I cannot accept Interac e-Transfer. IMPORTANT - \$2 will be deducted from Settlement Class Members electing payment via cheque to reflect the cost of issuing a cheque.

IMPORTANT - If you bank with **CIBC** or **Simplii** and do not have Interac e-transfer Autodeposit turned on, you should check the above box to receive a cheque. CIBC/Simplii customers have experienced difficulties with manually depositing Interac e-transfers.

Instructions on Depositing your e-Transfer (if applicable):

Unless you have Autodeposit setup for Interac e-Transfers, your security answer will be your birth month and will be required when collecting your e-Transfer. Your e-Transfer will be sent to the email entered in Step 1. Please select your birth month below:

BIRTHDAY MONTH

← PREVIOUS

CONTINUE →

End User Claim Form



RELEASE OF CLAIMS & CONSENT TO RETAIN INFORMATION

Release Of Claims

Have you entered into a private settlement outside of the Auto Parts class actions with any of the [defendants](#)?

YES NO

Consent To Retain Information

There will be at least one more distribution of settlement funds in the auto parts cases. That distribution may relate to the same brands and years covered by this claim. Subject to court approval, this claim will be your only opportunity to submit purchase information for the brands and years covered by this claim.

The information provided in this claim will be maintained by the Claims Administrator and used for the purposes of further distribution(s) in the auto parts cases.

Do you consent to us keeping your information for this purpose?

YES NO

← PREVIOUS

CONTINUE →

End User Claim Form



VERIFICATION

I verify that I am at least 18 years old.

I declare that the information provided in this Claim Form is true and correct.

AGREE AND SUBMIT

◀ PREVIOUS

This is Exhibit "B" mentioned and referred to in Affidavit of Ivan Bobanovic AFFIRMED BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. Both the affiant and the commissioner, Garrett M. Hunter, were located in the City of London, Province of Ontario.



Garrett M. Hunter, LSO#: 71800D,
A Commissioner for Taking Affidavits
in the Province of Ontario

TD MUTUAL FUNDS CLASS ACTION

Province of Ontario / Superior Court of Justice Court File No. CV-18-595380-00CP

CLAIM FORM

I. GENERAL INSTRUCTIONS – PLEASE READ CAREFULLY

1. **This Claim Form is directed to Class Members. Class Members are all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to September 11, 2024, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.**
2. For information on how your entitlement to compensation is calculated, please see the Distribution Protocol and Guide to the Distribution Protocol available at www.trailingcommissionssettlement.com.
3. If you are NOT a Class Member, as defined in paragraph 1 above, PLEASE DO NOT submit a Claim Form.
4. To make a claim for compensation from the Settlement in the above-noted action, you must complete and sign the Claim Form. If you fail to file a properly completed Claim Form, your claim may be rejected, and you may be precluded from any recovery from the compensation fund created in connection with the Settlement.
5. **NOTE:** The Defendant, TD Asset Management Inc., stopped paying trailing commissions to Discount Brokers on June 1, 2022. Accordingly, compensation will only be paid with respect to TD Mutual Fund units held on or before May 31, 2022.
6. Submission of a Claim Form does not assure that you will share in the Net Settlement Amount.
7. For questions about this Claim Form, or if you require assistance, please contact the Administrator, Verita Global, LLC, at 1-888-XXX-XXXX or supportemail@supportemail.com.
8. **MAIL YOUR COMPLETED AND SIGNED CLAIM FORM POSTMARKED ON OR BEFORE [INSERT CLAIMS DEADLINE], ADDRESSED TO THE ADMINISTRATOR:**

**TD Mutual Funds Class Action
c/o Verita Global, LLC
P.O. Box 3355
London, ON N6A 4K3**

II. KEY DEFINITIONS

1. “TD Mutual Funds” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“Defendant”) is trustee or was trustee at any time on or prior to September 11, 2024 (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.
2. “Excluded Persons” means
 - a. the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; or
 - b. any person who validly opted out of the class action.
3. “Discount Broker” means entities providing order execution only services, including, for example, TD Direct Investing, BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia

iTRADE, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers.

III. CLAIMANT IDENTIFICATION

1. Use Part I of this form below entitled "Claimant Identification" to identify each holder of the TD Mutual Funds that are the subject of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNER(S) OR THE LEGAL REPRESENTATIVE OF SUCH OWNERS.

IV. CLAIM FORM

1. Claim Forms must be submitted to the Administrator.
2. Claimants must provide details on the aggregate market value of all their TD Mutual Fund units held in monthly, quarterly, semi-annual or annual increments by identifying the end period date and the aggregate market value of all TD Mutual fund units held by the Claimant through a Discount Broker. Failure to report all required details may result in the rejection of a Claimant's claim.
3. Please list the aggregate market values separately and in chronological order by statement date.
4. Claimants should file a separate claim for each account through which TD Mutual Fund units were held.
5. Brokerage account statements, Holdings Summaries, or other similar alternative documentation evidencing a Claimant's mutual fund units must be submitted with the Claim Form. Failure to submit supporting documentation acceptable to the Administrator may result in the rejection of your claim.
6. The information required by the Administrator is the minimum amount of information necessary to process the claims. The Administrator may request additional information as required to efficiently and reliably calculate Claimants' potential claim. In some cases, where the Administrator cannot perform compensation calculations accurately or at a reasonable cost to the Class with the information provided by a Claimant, the Administrator may conditionally accept the claim pending receipt of additional information.

Must Be Postmarked No Later Than **DATE**

TD Mutual Funds Class Action

No. CV-18-595380-00CP

TDQ

CLAIM FORM

Please Type or Print in the Boxes Below
Do **NOT** use Red Ink, Pencil, or Staples

Must use Black or Blue Ink or your claim may be deemed deficient.

PART I: CLAIMANT IDENTIFICATION

Payee Name (as you would like the name(s) to appear on the cheque, if eligible for payment):

Payee Name (cont'd)

Payee Name (cont'd)

Telephone Number (Primary Daytime)

Telephone Number (Alternate)

Email Address

MAILING INFORMATION

Address

Address (cont'd)

City

Province

Postal Code

Province/State

Postal Code/ZIP Code

Foreign Country Name/Abbreviation

PART II. SCHEDULE OF TRANSACTIONS IN TD MUTUAL FUNDS CLASS ACTION

Please provide details on the aggregate market value of all TD Mutual Fund(s) units held in one of monthly, quarterly, semi-annual or annual increments from the beginning of your ownership through May 31, 2022:

Period Ending Date	Aggregate Market Value of TD Mutual Fund Holdings as of the Period Ending Date	Currency	Holdings (Monthly, Quarterly, Semi-Annually, Annually)	Proof Provided?
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
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MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N
MM/DD/YYYY	\$	CAD / USD		Y / N

If you need more space, please add additional pages in the same format.

YOU MUST READ AND SIGN THE DECLARATION ON PAGE 5. FAILURE TO SIGN THE DECLARATION MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.

PART III. DECLARATION

I (we) declare that the information on this Claim Form is true, correct and complete to the best of my (our) knowledge, information and belief.

I (we) declare that I (we) have disclosed all of my (our) TD Mutual Funds for the time periods required by this Claim Form.

I (we) also declare that I (we) am (are) not an Excluded Person(s) as defined in the General Instructions.

I (we) acknowledge and agree that the Administrator may disclose all information relating to my (our) claim to the Court and counsel to the parties in the Action, as may be necessary.

Executed this _____ day of _____ in _____
(Month/Year) (City/State/Province/Country)

(Sign your name here)

(Sign your name here)

(Type or print your name here)

(Type or print your name here)

(Capacity of person(s) signing, e.g., Claimant)

(Capacity of person(s) signing, e.g., Claimant)

Proof of Authority to File Enclosed? Yes No

Proof of Authority to File Enclosed? Yes No

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above declaration.
2. Remember to attach supporting documentation, if available.
3. Do not send original share certificates; we may not be able to send them back.
4. Keep a copy of your Claim Form and all supporting documentation for your records.
5. For confirmation of receipt of your claim please contact the Claims Administrator 60 days after submission. Please note claimants are encouraged (where possible) to file via the online claim filing portal available at www.trailingcommissionssettlement.com as it provides immediate confirmation or receipt.
6. If you move, you are required to send the Administrator your new address. Failure to notify the Claims Administrator of a new address may result in your settlement benefits not being received by you.

Privacy Statement

All personal information provided by or on behalf of the Claimant to the Administrator will be handled in accordance with applicable privacy laws and the Administrator's privacy policies available at www.veritaglobal.com. Such information will be used for the purposes of administering the Settlement Agreement, including evaluation by the Administrator, Class Counsel, and Defense Counsel, of the Claimant's eligibility for compensation under the Settlement Agreement. Personal information provided by the Claimant will not be disclosed without further express written consent of the Claimant, except to Class Counsel and Defense Counsel; to appropriate persons to the extent necessary to process claims or provide benefits under the Settlement Agreement; as otherwise expressly provided in the Settlement Agreement; pursuant to court order, or as otherwise permitted or required by law; as may be reasonably necessary in order to enforce, or for Class Counsel or Defense Counsel to exercise their respective rights (including appeal rights) under the Settlement Agreement; or to the immediate family members, counsel, accountants and/or financial advisors of the Claimant (each of whom the Claimant shall instruct to maintain and honour the confidentiality of such information).

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF IVAN BOBANOVIC

Siskinds LLP

Barristers & Solicitors
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Anthony O'Brien (LSO#: 56129U)
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Fax: 416.362.2610

Lawyers for the Plaintiff

TAB 5

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF CHARLES M. WRIGHT
(Affirmed November 28, 2024)**

I, Charles M. Wright, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

A. INTRODUCTION

1. I am a partner at the law firm Siskinds LLP (“**Siskinds**”), counsel for the Plaintiff and the Class, and as such I have personal knowledge of the facts and matters deposed to in this affidavit. Where facts are not within my personal knowledge, I have stated the source of my information, and I believe the information to be true.

2. On September 16, 2024, I affirmed an affidavit in support of the Plaintiff’s motion for approval of notice and related items in this action (“**First Affidavit**”). I hereby adopt the evidence I gave in my First Affidavit for all purposes of this affidavit. Attached hereto as **Exhibit “A”** is a copy of the Order of the Court dated October 1, 2024 (without schedules) in respect of the Plaintiff’s motion for approval of notice and related items.

3. In making this affidavit, it is not my intention to waive solicitor-client privilege, litigation privilege or any other privilege of any kind.
4. Unless otherwise stated or the context otherwise indicates, capitalized terms used in this affidavit have the meanings assigned to them in the Settlement Agreement dated September 11, 2024 (“**Settlement Agreement**”). Attached hereto as **Exhibit “B”** is a copy of the Settlement Agreement.
5. When I use the term “we” and its derivatives in this affidavit, I am referring to myself and the lawyers at Siskinds primarily responsible for the prosecution of the action.
6. I make this affidavit in support of the Plaintiff’s motions for the Dismiss Order, the Distribution Order, and a third Order addressing Class Counsel Fees and Class Counsel Disbursements, Mr. Westwood’s honorarium request, and the Funding Commission and the Funder’s Security.
7. By way of overview, in this affidavit I provide evidence regarding:
 - (a) the background to, and terms of, the Settlement Agreement (Section B below);
 - (b) the dissemination of the First Notice (Section C below);
 - (c) the form, content and method for disseminating Second Notice (Section D below);
 - (d) objections and supplemental opt-outs (Section E below);
 - (e) factors supporting the fairness and reasonableness of the Settlement (Section F below);
 - (f) the Distribution Protocol and the claims process (Section G below);
 - (g) the appointment of RicePoint Administration Inc., dba Verita Global (“**Verita**”) as Administrator (Section H below);

- (h) Class Counsel Fees and Class Counsel Disbursements (Section I below);
- (i) Mr. Westwood's honorarium request (Section J below);
- (j) an interim partial payment of the Funding Commission (Section K below); and
- (k) the release of the Funder's Security (Section L below).

B. BACKGROUND

8. In my First Affidavit at paragraphs 6 to 46, I described the background and history of the action, the key events leading to the Settlement Agreement, and some of the key terms of the Settlement Agreement. I rely on those parts of my First Affidavit for purposes of this affidavit.

9. I also note that the Settlement Agreement contains the following important terms in addition to those described in my First Affidavit:

- (a) the Settlement Amount of \$70.25 million is non-reversionary (s 4.1);
- (b) the Settlement Amount was required to be paid into the Trust Account under the control of Siskinds by November 8, 2024. The Settlement Amount must be invested in a guaranteed investment product, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (s 3.1(1)). The Settlement Amount was received by Siskinds on November 7, 2024. It has been invested in a Cashable GIC with The Bank of Nova Scotia, which earns interest at a rate of 3.12% per annum (if held until the maturity date of November 8, 2025, the Settlement Amount would mature at \$72,441,800). The investment proceeds will accrue to the benefit of Class Members;
- (c) within 30 days of the Effective Date of the Settlement Agreement, the Trust Account will be transferred to the Administrator (s 3.1(8)). The Administrator will continue to invest

the Settlement Amount. The investment proceeds will continue to accrue for the benefit of Class Members;

(d) the Effective Date of the Settlement Agreement occurs if and when the Dismiss Order is granted and becomes a final order;

(e) on the Effective Date of the Settlement Agreement, the action will be dismissed with prejudice and without costs. At that time, the Settlement Agreement will fully and finally release the “Released Claims” of all “Releasers” as against the “Releasees”, as each of those terms is defined in the Settlement Agreement. The releases do not apply to the Other 2018 Actions, the 2022 Actions, including *Aggarwal v TD Asset Management Inc.*, Court File No. CV-22-691344-00CP (“**Aggarwal Action**”) (which is the subject of a separate settlement), the Discount Broker Actions, or to any Person other than the Releasees (ss 7.1, 7.3);

(f) the Plaintiff and Defendant (also referred to herein as “**TDAM**”) have termination rights if, among other things, the Court declines to approve the Settlement Agreement or the Settlement Agreement is approved in a materially modified form (s 6.1(1));

(g) the Court’s refusal to approve the Distribution Order, Class Counsel Fees or Class Counsel Disbursements does not provide a basis for termination of the Settlement Agreement (s 6.1(3));

(h) the Defendant will provide information and data to assist with distribution of the Net Settlement Amount to Class Members (s 10.2); and

(i) the Court retains supervisory jurisdiction over the administration of the Settlement Agreement (s 14.1(1), Dismiss Order para 11).

10. The Settlement Agreement contains terms relating to settlements of the Other 2018 Actions (s 13). It provides that:

(a) Siskinds intends to maximize the recovery of damages in the Other 2018 Actions and Siskinds will, acting reasonably and in good faith, seek to negotiate terms in any Subsequent Settlement that are at least as favourable to class members in the Other 2018 Actions as the Settlement Agreement is to Class Members in this action. This is consistent with our understanding of the obligation we owe to class members in the Other 2018 Actions irrespective of the existence of this provision, which is to maximize their recovery;

(b) if a Subsequent Settlement of one of the Other 2018 Actions is reached, when disclosure is permitted Siskinds shall advise the Defendant in writing of the Subsequent Settlement, the amount of that Settlement, and acting reasonably and in good faith, whether that Subsequent Settlement is at least as favourable to the class members in the Other 2018 Action as the Settlement Agreement is to the Class Members in this action having regard to, among other things:

(i) the Subsequent Settlement Amount as a percentage of the amount of trailing commissions paid by the applicable Defendant to Discount Brokers compared to the Settlement Amount as a percentage of the trailing commissions paid to Discount Brokers by TDAM (recognizing that there may be limitations in the available data);

(ii) factual differences between this action and the Other 2018 Action impacting the quantum of potential recovery;

(iii) whether a Material Adverse Litigation Event has occurred; and

- (iv) any other factor that, in our opinion, impacted the quantum of potential recovery and likelihood of success of the Other 2018 Action compared to this action;
- (c) any motion for Court approval of a Subsequent Settlement shall include our opinion on whether the Subsequent Settlement is at least as favourable to the class members in the Other 2018 Action as the Settlement Agreement is to the Class Members in this action. This informational obligation does not fetter our discretion with respect to the Other 2018 Actions or the discretion of the plaintiffs in the Other 2018 Actions. Rather, the obligation requires information to be provided to the Court that is substantially similar to the information we would expect to provide irrespective of the existence of the reporting obligation; and
- (d) other than as is expressly stated in section 13 of the Settlement Agreement, no rights of standing are created in favour of TDAM in the Other 2018 Actions.

C. IMPLEMENTATION OF FIRST NOTICE

11. Siskinds implemented the following components of Part 1 of the Plan of Notice:
 - (a) on October 9, 2024, the short-form and long-form First Notice were posted on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/> (“**Siskinds Case Webpage**”) in English and French; and
 - (b) on October 9, 2024, the short-form and long-form First Notice (in English and French) were emailed to 2,387 potential Class Members and mailed to 40 potential Class Members who previously contacted us for the purpose of receiving notice of developments in the action.

12. The long-form First Notice notified Class Members that Siskinds would post certain additional information on the Siskinds Case Webpage by October 28, 2024. We did so as follows:

- (a) on October 9, 2024, we posted the Settlement Agreement, as well as the October 1, 2024 Order and Endorsement of this Court; and
- (b) on October 28, 2024, we posted:
 - (i) the proposed Distribution Protocol;
 - (ii) a summary of the basis for our recommendation to the Plaintiff, the Class Members and the Court as to the fairness and reasonableness of the Settlement; and
 - (iii) a Guide to the Distribution Protocol that explains, in plain language, how the Distribution Protocol and claims process will work.

13. Attached hereto as **Exhibit “C”** is a copy of the summary rationale for the Settlement.

14. Attached hereto as **Exhibit “D”** is a copy of the Guide to the Distribution Protocol.

15. The short-form First Notice was filed by the Defendant as a news release on SEDAR+ on November 14, 2024.

16. I understand from the affidavit of Ivan Bobanovic that Verita implemented the components of Part 1 of the Plan of Notice other than the components completed by Siskinds and the Defendant. The cost for Verita to complete those elements of Part 1 of the Plan of Notice was \$24,882 (not including taxes), which is consistent with the estimate I provided in my First Affidavit.

D. SECOND NOTICE

The Content of Second Notice

17. The short-form, long-form, and internet banner versions of Second Notice are attached as Schedules 2, 3, and 4, respectively, to the Distribution Order.

18. Second Notice provides notice, among other things, of (if granted by the Court):

- (a) approval of the Settlement Agreement;
- (b) approval of Class Counsel Fees and Class Counsel Disbursements;
- (c) approval of the Distribution Protocol;
- (d) the appointment of the Administrator;
- (e) the start of the claims process;
- (f) the Claims Bar Deadline; and
- (g) how to make a claim for compensation.

Dissemination of Second Notice

19. The Plan of Notice is attached to the Distribution Order as Schedule 5.

20. Under the Plan of Notice, Second Notice will be disseminated in the same manner as First Notice, namely as follows:

- (a) Short-form notice:
 - (i) posted by Siskinds on the Siskinds Case Webpage, in English and French;

- (ii) provided (by email, if possible) by Siskinds to any potential Class Member who has previously contacted Siskinds for the purposes of receiving notice of developments in the action (in English and French);
 - (iii) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (iv) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (v) published once in the business section of *La Presse*, in French;
 - (vi) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (vii) filed by the Defendant as a news release on SEDAR;
- (b) Long-form notice:
- (i) posted by Siskinds on the Siskinds Case Webpage, in English and French; and
 - (ii) provided (by email, if possible) by Siskinds to any potential Class Member who has previously contacted Siskinds for the purposes of receiving notice of developments in the action (in English and French);

(c) Internet banner:

- (i) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, for no less than 30 days and no more than 35 days; and
- (ii) published as a 12-day sponsored news link on Stockhouse.

21. It is estimated that the cost of disseminating Second Notice under the Plan of Notice will be the same as the cost of disseminating First Notice under the Plan of Notice (see paragraph 16 above). That cost, in my opinion, is reasonable and proportionate considering the quantum of the settlement and the importance of notifying Class Members of the items referenced at paragraph 18 above.

22. In addition to the formal Plan of Notice, the streamlined claims process, discussed in Section G below, will also bring the fact of the Settlement Agreement and the process for making a claim for compensation to the attention of a large number of Class Members. This creates a robust notice program. It is consistent with the manner of providing notice in similar cases. Notably, the Plan of Notice for disseminating Second Notice is the same as for the First Notice and is virtually identical to the method for disseminating notice of certification that was approved by Order of Justice Belobaba on December 14, 2021. In my experience, the combination of direct and indirect methods of providing notice should cause the Second Notice to come to the attention of a significant portion of the Class.

E. OBJECTIONS AND OPT OUTS

23. The deadline to object to the Settlement, the proposed Distribution Protocol, or to the requested Class Counsel Fees and Class Counsel Disbursements was November 18, 2024. To date, Siskinds has not received any objections.

24. A supplemental opt-out procedure for Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 was approved by Order of this Court dated October 1, 2024. The Supplemental Opt-Out Deadline is December 8, 2024. Siskinds has not received any supplemental opt-out requests as of the date of this affidavit. An update will be provided to the Court on any opt-outs after the Supplemental Opt-Out Deadline has passed.

F. FACTORS SUPPORTING THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

25. The Defendant has agreed to pay \$70.25 million to resolve the claims in the action. The \$70.25 million has been invested since November 8, 2024 and interest is accruing for the benefit of Class Members. In addition, costs awards from the certification motion and the Defendant's motion for leave to appeal from the certification order in a total amount of \$85,000 will be applied for the benefit of Class Members.

26. This is a very good result for Class Members. It reflects a fair and reasonable compromise made by the Plaintiff on our recommendation. That recommendation was based on the information available to us, our significant experience litigating securities and consumer class actions, the time-value of money for Class Members, and our analysis of potential recovery at trial weighed against the risks that the Plaintiff would be unsuccessful or only partially successful at trial.

Information Available to Siskinds

27. Although the discovery process was in its early stages, in making our recommendation to the Plaintiff we had access to documentary evidence, expert evidence and other sources of information

that are indicative of a mature understanding of possible trial outcomes and risks facing the Plaintiff and Class Members. In particular, we had access to the following:

- (a) the reports and studies of securities regulators on the payment of trailing commissions, including reports discussing the rationale for the payment of trailing commissions and disclosure issues;
- (b) the submissions of industry organizations to securities regulators on the payment of trailing commissions and purported services offered by Discount Brokers;
- (c) TDAM's disclosure documents filed on SEDAR (now SEDAR+), including Simplified Prospectuses and Fund Facts;
- (d) the constating documents for the TD Mutual Funds, including the Declarations of Trust and amendments thereto;
- (e) the reasons of Justice Belobaba on the certification motion in this action;
- (f) the evidence filed by TDAM on the certification motion, including the affidavit of Huck Oon discussing, among other things, purported services provided by Discount Brokers and TDAM's disclosures;
- (g) the expert opinion of Ermanno Pascutto filed by the Plaintiff in support of the certification motion, which discusses the history and rationale for the payment of trailing commissions to Discount Brokers;
- (h) the transcripts from cross-examinations on the certification motion, including of Mr. Oon and of the former representative plaintiff Gary Stenzler;
- (i) the Defendant's written and oral submissions on the certification motion;

- (j) the reasons of this Court on the motions to stay the 2022 Actions and the submissions of the 2022 Plaintiffs, including Mr. Aggarwal, on those motions;
- (k) the evidence and factums filed by the parties to the 2022 Actions on the Defendants' motions for summary judgment seeking to dismiss the 2022 Actions as statute-barred;
- (l) the reasons of this Court and the Divisional Court on the certification motion in *Frayce v. BMO InvestorLine Inc. et al.* ("**Frayce Action**");
- (m) the Defendant's Statement of Defence;
- (n) the Plaintiff's documents, including his account statements;
- (o) data provided by TDAM facilitating the calculation of the amount of trailing commissions paid by TDAM to Discount Brokers (which was subject to certain assumptions);
- (p) 2,730 documents produced by TDAM in its initial round of documentary discovery, including:
 - (i) TDDI data related to trailing fee commissions paid;
 - (ii) disclosure documents, including Simplified Prospectuses, Annual Information Forms, Declaration of Trusts and Fund Facts; and
 - (iii) emails and other documents collected from the relevant custodians;
- (q) TDAM's mediation brief and the positions taken by TDAM throughout the mediation process;
- (r) two reports prepared for the mediation by TDAM's expert, KPMG, on damages and purported services provided by Discount Brokers;

- (s) the report of the Plaintiff's expert, Errol Soriano of KSV Advisory, on damages prepared for the mediation and the input received from Mr. Soriano and his team throughout the mediation and negotiation process leading to the Settlement Agreement;
- (t) the positions taken by Mr. Aggarwal in settlement negotiations;
- (u) the positions taken by the defendants in the Other 2018 Actions; and
- (v) the insights and recommendations of a highly experienced mediator, Joel Wiesenfeld.

28. In our view, we possessed more than adequate information to make an informed recommendation concerning the resolution of the action on the basis upon which it was resolved.

Litigation Risks

29. In our view, the terms of the Settlement Agreement are fair, reasonable and in the best interests of Class Members. We recommend the Settlement to the Plaintiff, the Class Members and the Court. The Settlement Agreement delivers an immediate benefit to Class Members in exchange for the release of their claims, which faced risks, even though we believed, and we continue to believe, that the claims are strong on their merits.

30. The risks discussed below include both the various generic risks inherent in all litigation that influence the range of outcomes, as well as the risks specific to the action. The case-specific risks are those related to the issues and challenges arising on the particular facts of this case. The main risks that we identified in making our settlement recommendation to the Plaintiff are explained below.

31. These risks are acute because the trial judge would only need to accept one of the various defence arguments discussed below for the claims of some or all of the Class Members to fail on liability or damages.

32. Applying our professional judgment and our experience litigating class actions generally and prosecuting this action and the Other 2018 Actions, we weighed all of these risks in the risk-reward calculus, and arrived at the conclusion that the terms of the Settlement Agreement are fair, reasonable and in the best interests of Class Members.

(i) Generic litigation risks

33. In speaking of the generic risks inherent in litigation, we are referring to the risks arising from the passage of time, and the procedural risks that inhere in litigation of this complexity, such as the risk that witnesses will not appear or will not give the evidence expected of them, and the risk of adverse procedural or evidentiary rulings by the Court.

34. With the passage of time, documentary evidence may no longer be available, and witnesses may die or their memories of the material events may fade, all of which would impact the Plaintiff's ability to prove his case.

35. There was a risk that the passage of time would have an impact on the amount that could be recovered in the action if the Plaintiff was successful on the common issues but individual issues remained, such that an aggregate damages award was not available. By the time the two-stage common issues trial process concluded, including appeals, more than 10 years would likely have passed from the start of the action. With the passage of that amount of time, some Class Members may no longer be alive, corporate Class Members may no longer exist, some Class Members may not have retained the required transaction records to support their claims or we may be unable to obtain their records from TDAM, its affiliated Discount Broker TD Direct Investing ("**TDDI**") or Discount Brokers other than TDDI ("**External Discount Brokers**"), and some Class Members may be less inclined to file a claim or come forward to prove their individual case. That is compounded by the fact that the alleged misconduct in this case dates back to the start of the 2000s or earlier.

(ii) The risk that the Court would find that TDAM adequately disclosed the trailing commissions

36. Disclosure was a central theme of TDAM's defence. It argued that the trailing commissions paid to Discount Brokers were clearly and repeatedly disclosed by TDAM to investors in Fund Facts, Simplified Prospectuses and other disclosure documents, and as such the investors cannot complain about these payments. TDAM emphasized explicit language in its Fund Facts stating that "TDAM pays the trailing commission to your representative's firm, **including a discount broker**" (emphasis added). It argued that it made disclosure using the language required by Canadian securities regulators and the issuance of the disclosures was authorized by the regulators.

37. The adequacy of TDAM's disclosure was likely to be one of the most hotly-contested issues in the action. We were confident in our position on this issue. However, if the trial judge accepted that TDAM adequately disclosed the trailing commissions and other impugned conduct, it would have defeated some or all of the claims of the Class Members. The disclosure argument fed into virtually all aspects of the pleaded claims and defences, including TDAM's limitations and consent/acquiescence defences discussed below.

(iii) The risk that the Court would find that there was no misconduct or breach of duty

38. ***No illegality argument:*** TDAM argued that its payment of trailing commissions to Discount Brokers was not illegal. It contended that the mutual fund industry is heavily regulated in Canada and regulators permitted the payment of trailing commissions to Discount Brokers until the prohibition came into force on June 1, 2022. TDAM argued that it complied with the regulatory ban and stopped paying trailers, and that it has no liability to unitholders for paying trailing commissions to Discount Brokers when it was legally allowed to do so.

39. The existence of that risk is evidenced by the failure of the *Frayce* Action. That was a proposed class proceeding that targeted the Discount Brokers (including TDDI) that received trailing commissions from mutual fund managers (including TDAM). The proposed class in the *Frayce* Action overlapped with the Class in this action. The plaintiffs' certification motion in the *Frayce* Action was dismissed by Justice Belobaba because "the practice of paying trailing commissions to discount brokers, although controversial and needing reform, was not illegal or unlawful until the law was changed effective June 1, 2022." That decision was upheld on appeal to the Divisional Court. The Court of Appeal refused leave to appeal on September 6, 2024.

40. The nature of the allegations in the *Frayce* Action and this action are significantly different. In particular, as pleaded and argued on the certification motion, the *Frayce* Action focused narrowly on whether Discount Brokers complied with Canadian securities laws in receiving trailing commissions from mutual fund managers. By contrast, the allegations in this action do not turn on whether the Defendant complied with Canadian securities laws, and instead focus on TDAM's obligations as a trustee and fiduciary. There was, nevertheless, a risk that the Court would accept similar arguments made by TDAM.

41. ***Compliance with the terms of the trust instruments:*** TDAM asserted that it had broad discretion to manage the day-to-day affairs under the terms of the operative trust instruments. TDAM argued that this general discretion, coupled with the express terms of the trust instruments regarding its ability to pay management fees (in which the trailing commissions were embedded), gave it the discretion to determine whether it paid trailing commissions to Discount Brokers and in what amount. TDAM took the position that there could be no breach of trust or fiduciary duty in circumstances where it exercised the discretion and rights conferred on it by the trust instruments.

42. ***No obligation to create Series D units or other non-trailer paying series:*** One of the breaches of trust and fiduciary duty alleged by the Plaintiff is that TDAM failed to create a series of units that did not pay trailing commissions and failed to restrict units held through Discount Brokers to non-trailer paying series, such as Series F units (or, alternatively, Series D units, which paid a reduced trailing commission during the material time). TDAM asserted that it had no obligation to do so under the terms of the trust instruments or general trust law. It argued that under the terms of the trust instruments, it had sole discretion over the creation of new series, redesignation of series of units and the fees associated with a series of units. Moreover, TDAM contended that such an obligation would amount to a prospective duty owed to future unitholders, which was untenable at law and under the terms of the trust instruments.

43. ***Limited duty and no standing argument:*** TDAM asserted that, under the terms of the operative trust instruments, it only owed heavily circumscribed obligations to Class Members. TDAM said it fulfilled those obligations, the most prominent of which was the right of Class Members to “receive payment from the Fund at the time, place, in the manner and subject to the conditions herein expressly provided”.

44. TDAM recognized that a standard and duty of care exists under the terms of the trust instruments. However, TDAM took the position that the standard and duty of care was owed to the TD Mutual Funds as a whole, not individual beneficiaries such as the Plaintiff and Class Members. TDAM argued that Class Members had no standing to enforce the standard and duty of care owed to the TD Mutual Funds. To support this argument, TDAM pointed to the terms of the trust instruments that purportedly restricted “in every conceivable manner” the ability of the Plaintiff and Class Members to insert themselves in the management of the TD Mutual Funds.

45. ***No claim under section 23.1 of the Trustee Act:*** The Plaintiff alleged that the payment of

trailing commissions out of trust assets should be disallowed as an improper expense under section 23.1 of the *Trustee Act*. TDAM asserted that the terms of the trust instruments supersede the rights granted under the *Trustee Act*, including section 23.1. Consequently, TDAM took the position that the Plaintiff and Class could not rely on that provision.

46. ***No relationship between TDAM qua manager and the Class Members:*** TDAM argued that it had no legal relationship with unitholders in its role as manager of the TD Mutual Funds. Accordingly, it asserted that, *qua* manager, it did not owe the Plaintiff or Class Members any obligations under the trust instruments or otherwise.

(iv) The risk that that the Court would accept the “services” argument

47. While acknowledging that the Class Members did not receive investment advice from Discount Brokers, TDAM argued that Discount Brokers did provide valuable services to Class Members, which justified the payment of reasonable trailing commissions to those Discount Brokers. This argument had implications for liability and damages in the proceeding.

48. One position that TDAM took was that a reasonable payment for the services provided by Discount Brokers was the typical Series D or Series E trailing commission rate of 0.25% (the advisor or full-service trailing commission typically ranges from 0.50% to 1.00%). If the Court accepted this argument, it would result in a significant reduction in the value of the recoverable trailing commissions in this action. For Class Members who held Series D or Series E units of the TD Mutual Funds or any other series paying a trailing commission of 0.25% or less, there would be no liability and no damages. The recovery on all other series would be a function of the difference between the actual trailing commission percentage rate and the 0.25% trailing commission rate.

49. Another position taken by TDAM was that Discount Brokers provide services that are worth *more* than the value of the trailing commissions paid on behalf of the Plaintiff and Class Members.

The Defendant adduced evidence from its expert at the mediation that the cost of research tools provided to investors, recreating the fund portfolio and the time it would take Class Members to replicate the services provided by Discount Brokers would exceed the value of the trailing commissions paid. If this argument was accepted, then no Class Member would be entitled to recovery.

(v) *The risk that the claims of some or all Class Members were statute-barred*

50. TDAM raised limitation defences under the *Limitations Act, 2002*. It argued that Class Members' claims were discoverable at the time they acquired their TD Mutual Fund units. TDAM relied on disclosures it made in documents that were required to be sent to, or were accessible by, Class Members at the time they acquired their TD Mutual Fund units. If this argument was accepted, any losses in relation to trailing commissions paid more than two years prior to the action being commenced (*i.e.* prior to April 2016) would not be recoverable.

51. TDAM also made the argument that any trailing commissions paid on TD Mutual Fund units acquired more than two years prior to the action being commenced would not be recoverable. Otherwise put, TDAM's position was that the limitation period did not "roll" with the payment of trailing commissions. If the trial judge accepted TDAM's argument, then claims in respect of trailing commissions paid on TD Mutual Fund units acquired prior to April 2016, regardless of when those trailing commissions were paid, would be statute-barred and unrecoverable. This would adversely impact a substantial number of Class Members who continued to hold TD Mutual Fund units after April 1, 2016. Indeed, many investors, including Mr. Westwood, bought and held many of their TD Mutual Fund units before April 2016 and continued to hold them after April 2016.

52. TDAM also raised limitation defences under the Ontario *Securities Act* with respect to the misrepresentation claim. TDAM argued that a three-year limitation period applies to the *Securities*

Act misrepresentation claim that is not subject to discoverability. Consequently, TDAM's position was that all misrepresentation claims based on units acquired prior to April 2015 were statute-barred.

(vi) *The risk that a consent and/or acquiescence defence would apply*

53. TDAM relied on consent (concurrence) and acquiescence defences to the asserted breaches of trust and fiduciary duty. TDAM argued that the trailing commission payments to Discount Brokers were fully disclosed to Class Members before they invested in the TD Mutual Funds and that the Plaintiff and Class Members nevertheless chose to purchase their TD Mutual Fund units. TDAM argued that the Plaintiff and Class cannot resile from that informed choice. TDAM's position, therefore, was that a concurrence or acquiescence defence was available. There was a risk that the Court would accept this argument. Concurrence or acquiescence provide a full defence to those claims.

(vii) *The risk that Class Members' claims were released*

54. TDAM asserted that the terms of the operative trust instruments provided a release in its favour from "all liability" to Class Members who redeemed their TD Mutual Fund units with respect to the units so redeemed. If the Court accepted this argument, then those former unitholder Class Members would not have a claim with respect to the TD Mutual Fund units they redeemed.

55. TDAM also argued that the terms of the operative trust instruments extinguish its liability "with respect to the propriety of [TDAM's] acts and transactions" if it does not receive a written objection within ninety days after it provides its financial statements. If the Court accepted this argument, then the claims of a substantial number of the Class Members would be extinguished.

(viii) The risk that the Plaintiff would be unable to establish a misrepresentation

56. There was a risk that the Plaintiff's statutory misrepresentation claim under section 130 of the *Securities Act* would be unsuccessful. TDAM took the position that the payment of trailing commissions to Discount Brokers was adequately disclosed and that its disclosures cannot attract liability because they track regulatory requirements.

57. Moreover, TDAM argued that any alleged misrepresentation would not reasonably be expected to have an impact on the market price or value of the TD Mutual Fund units.

(ix) Risks relating to the damages that would be recoverable

58. Based on an analysis of TDAM's data undertaken by us and the Plaintiff's expert, Mr. Soriano, there was a maximum of approximately \$622 million in trailing commissions recoverable from November 1, 2002 to the end of May 2022 (when the trailing commission ban came into effect). The Defendant's expert's position was that the quantum of trailing commissions payable was less: approximately \$602 million.

59. The \$622 million figure included approximately \$552 million in trailing commissions paid to the Defendant's affiliated Discount Broker TDDI, and \$70 million to External Discount Brokers.

60. The amounts that we and our expert estimated were subject to certain assumptions and extrapolations owing to limitations on available data. For example, data was not available for trailing commissions paid to External Discount Brokers from 2003 to 2009. Data on payments to some External Discount Brokers did not differentiate between the trailing commissions paid to the External Discount Broker and its affiliated full-service channel. Consequently, assumptions had to be used to allocate trailers between trailers paid in the Discount Broker channel and non-Discount Broker channel.

61. There were risks that even if the Plaintiff and Class were successful on the merits, recoverable trailing commissions would be much lower than the best-case scenario outlined above.

62. *First*, recoverable trailing commissions would be substantially lower if the Defendant's limitation period arguments discussed above were accepted.

63. If the Court accepted that only trailing commissions paid within two years of the action being commenced (April 2016 onwards) were recoverable, then recoverable trailing commissions would be approximately \$171 million. The worst-case scenario on the limitation period argument was that all trailing commissions paid on TD Mutual Fund units that were acquired prior to April 2016 (including trailing commissions paid after April 2016) were unrecoverable. That would substantially reduce the quantum of recoverable trailing commissions even further.

64. *Second*, if the Court accepted the Defendant's argument that the Series D trailing commission rate of 0.25% was reasonable compensation for the services provided by Discount Brokers (see paragraphs 47 to 49 above), then based on the calculations of the Defendant's expert KPMG, aggregate recoverable trailing commissions would be reduced by approximately 52%.

65. The impact of this Series D argument was even more pronounced when combined with the argument that only trailing commissions paid within two years of the action being commenced (April 2016 onwards) were recoverable. That is because more TD Mutual Fund units were held in a discount series during that period, particularly subsequent to June 2019 when TDAM automatically converted all Series A units (or their equivalents) held through Discount Brokers to Series D units. With the combination of the Series D and limitations arguments, the reduction for the post-April 2016 period would be greater than the above-noted 52%.

66. Notably, KPMG's opinion at the mediation, depending on the assumptions used, was that recoverable trailing commissions were as low as \$13 million if TDAM's limitations and discount

series arguments were accepted. This represented significant downside damages risk to the Plaintiff and Class Members even if they were otherwise successful on the merits.

(x) *Risks arising from the Aggarwal Action*

67. The first of the 2022 Actions was filed on July 28, 2022. It was an omnibus proceeding targeting a number of mutual fund trustees and managers, including TDAM. Mr. Aggarwal was a named plaintiff in the second 2022 Action filed on August 12, 2022. The *Aggarwal Action*, in which TDAM was the sole defendant, was subsequently filed on December 7, 2022.

68. The filing of the first 2022 Action on July 28, 2022 occurred at a time when the Plaintiff and the Defendant had been preparing for some time for the first formal mediation to take place on November 7, 2022. It created risks for the Plaintiff and the Class Members in terms of litigation outcomes and it also added significant complexity to the settlement discussions to resolve the action.

69. While we viewed the *Aggarwal Action* and the other 2022 Actions as opportunistic and legally and factually flawed, there was nevertheless a risk that, even if the Defendant's liability was established, the trailing commissions that are recoverable in this action could be reduced due to the *Aggarwal Action*. The *Aggarwal Action* was brought on behalf of all people who held TD Mutual Fund units through a financial advisor or other non-Discount Broker channel. The *Aggarwal Action* and this action targeted the same pool of trailing commissions. Mr. Aggarwal claims that the losses for trailing commissions paid to Discount Brokers should be split between the *Aggarwal Action's* class members and the Class Members in this action based on the proportionate value of their holdings. If the Court accepted this argument, a very high percentage of the recovery would go to class members in the *Aggarwal Action*, with a correspondingly small percentage going to the Class Members in this action. In assessing the risk created by the *Aggarwal Action*, it was necessary for us

to balance what we viewed as a very low probability of the *Aggarwal* Action being successful against the high magnitude of the impact if it was successful.

Immediate benefit

70. The Settlement Agreement eliminates the above identified risks to recovery and provides an immediate and substantial benefit to Class Members in exchange for the release of their claims. The immediate benefit contrasts with the multiple years of highly contested litigation that would need to be undertaken to finally resolve the action on its merits, including the two common issues trials necessitated by the filing of the *Aggarwal* Action.

Data available to assist with the distribution

71. As discussed in the next section, the Settlement Agreement requires the Defendant to provide customer data that will streamline the claim filing process for a significant number of Class Members. That should significantly increase the ease and efficiency of making a claim for those Class Members. This provides them with a substantial non-monetary benefit.

G. DISTRIBUTION PROTOCOL AND CLAIMS PROCESS

72. The proposed Distribution Protocol is attached to the Distribution Order as Schedule 6. Definitions in the proposed Distribution Protocol apply to this section of my affidavit.

The use of client information for the distribution of settlement funds

73. Under the terms of the Settlement Agreement, TDAM is required to provide the available name, contact information and account level data that will allow the Administrator to determine the “Trailing Commissions Paid” for Class Members who were clients of its affiliated Discount Broker TDDI (“**Client Information**”).

74. I understand from Melissa Holbrook of KSV Advisory and believe that she has been provided with the Client Information and it includes data and contact information for hundreds of thousands of accounts for Class Members who held their TD Mutual Fund units through TDDI from November 2002 to June 2022.

75. Based on the data produced by the Defendant for the purposes of the mediation process, we believe that Class Members with the lion's share of the losses are included in the Client Information. Indeed, based on the Defendant's data, approximately 89% of the trailing commissions paid at issue in the action were paid to Class Members who held their TD Mutual Fund units through TDDI (*i.e.* TDDI clients).

76. I note that there are limitations with the Client Information provided by the Defendant. Based on a preliminary analysis conducted by Melissa Holbrook of KSV Advisory, contact information is unavailable for some Class Members and we expect that the contact information for others (email or mailing addresses) may be stale.

77. The claims process is described in the affidavit of Ivan Bobanovic. As described therein, it allows Class Members to rely on the Client Information where that is available. All other Claimants will be able to make claims using their own information and records of their TD Mutual Fund holdings through Discount Brokers. The use of the Client Information should substantially increase the speed, user friendliness and efficiency of the claims process for the benefit of Class Members.

Calculating entitlements under the proposed Distribution Protocol

78. The key purpose of the Distribution Protocol is to determine how the Net Settlement Amount will be allocated among, and distributed to, Class Members who file valid and timely claims.

79. Each Class Member who submits a valid claim is a Claimant. A Claimant that has Trailing Commissions Paid greater than zero will be an Authorized Claimant eligible to receive a *pro rata* share of the Net Settlement Amount based on their Trailing Commissions Paid relative to the Trailing Commissions Paid of all Authorized Claimants. However, an Authorized Claimant will only be compensated if their minimum *pro rata* entitlement calculated under the Distribution Protocol is greater than \$25.

80. The Administrator’s calculation of Trailing Commissions Paid will be determined as follows:

- (a) **A. Actual Trailers Paid:** Where the Administrator has Client Information showing the actual amount of trailing commissions paid to a Claimant’s Discount Broker by TDAM on the Claimant’s behalf, that amount shall be the Trailing Commissions Paid for the Claimant;
- (b) **B. Estimated Trailers Paid Based on Asset Value:** If the information described in “A” is unavailable, Trailing Commissions Paid will be based on the aggregate market value of a Claimant’s TD Mutual Fund units held through a Discount Broker assuming that trailing commissions were charged at a rate of 0.75% annually, calculated as follows:

<p><i>If monthly asset value information is available:</i></p>	<p>For each month, Trailing Commissions Paid equals the [Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable month] multiplied by [0.75%] multiplied by [1/12].</p> <p>The amount determined for each month over the period during which the TD Mutual Fund units were held by the Claimant will be added together.</p>
<p><i>If quarterly asset value information is available:</i></p>	<p>For each quarter, Trailing Commissions Paid equals the [Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable quarter] multiplied by [0.75%] multiplied by [1/4].</p> <p>The amount determined for each quarter over the period during which the TD Mutual Fund units were held by the Claimant will be added together.</p>

<p><i>If asset value information in six-month intervals is available:</i></p>	<p>For each six-month interval, Trailing Commissions Paid equals the [Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable six-month period] multiplied by [0.75%] multiplied by [1/2].</p> <p>The amount determined for each six-month interval over the period during which the TD Mutual Fund units were held by the Claimant will be added together.</p>
<p><i>If annual asset value information is available:</i></p>	<p>For each year, Trailing Commissions Paid equals the [Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable 12-month period] multiplied by [0.75%].</p> <p>The amount determined for each year during which the TD Mutual Fund units were held by the Claimant will be added together.</p>
<p><i>If asset value information is available at a different interval between one month and a year:</i></p>	<p>The Administrator will calculate the Trailing Commissions Paid in a manner analogous to the above.</p>

(c) **Priority scheme:** Where the Administrator has a combination of the information described above, the Administrator will give priority to “A” and then “B”. For “B”, the Administrator will use the information available over the shortest time interval first (*e.g.* using monthly first, then quarterly, then at six-month intervals, then annually);

(d) **Post June 1, 2022 Trailing Commissions Paid:** For all Claimants, Trailing Commissions Paid on or after June 1, 2022 shall be deemed to be zero; and

(e) **Questrade:** Trailing Commissions Paid shall be deemed to be zero for TD Mutual Fund units held through Questrade from January 2009 onwards.

81. By basing Class Members’ entitlement to compensation from the Net Settlement Amount on Trailing Commissions Paid, the Distribution Protocol will distribute money to Class Members in a manner that tracks the losses alleged in the litigation. In my opinion, dividing compensation amongst Class Members who make a claim based on their relative alleged losses is fair and reasonable.

82. In addition, key assumptions and limitations underpinning a Claimant's Trailing Commissions Paid are reasonable and fair in my opinion:

(a) ***The use of actual trailing commissions paid to calculate a Class Members' entitlement:*** Actual trailing commissions paid will only be used where a Class Members' Client Information is provided to the Administrator. Information on the actual amount of the trailing commissions they paid is not readily available to Class Members. Class Members' account statements and other records received from their Discount Broker will show their TD Mutual Fund units' value. It may also show the aggregate compensation the Discount Broker received in the form of trailing commissions (at least after CRM2 reforms were implemented) but will not differentiate between the amount paid to the Discount Broker from TDAM on the TD Mutual Funds and the amounts paid on other mutual fund units;

(b) ***0.75% of the value of the TD Mutual Funds units held:*** Trailing commissions paid by TDAM to Discount Brokers on Class Members' behalf was based on a percentage of the value of their TD Mutual Fund holdings. That percentage varies depending on the series of the TD Mutual Fund held and the type of fund. The percentage rates generally range from 0.10% to 1.00%. The average percentage rate charged varied over time, including significantly in 2019 when the Defendant automatically converted Series A units (or their equivalents) to Series D, which is a reduced trailer series. To reduce complexity, increase efficiency and promote a user-friendly administration, an assumed trailer rate of 0.75% annually is applied in all situations where Trailing Commissions Paid are based on the value of a Claimant's TD Mutual Fund units;

(c) ***No compensation post-June 1, 2022:*** The regulatory ban on the payment of trailing commissions to Discount Brokers went into effect on June 1, 2022. To the best of our

knowledge and belief, the Defendant stopped paying trailing commissions to Discount Brokers in compliance with the regulatory ban; and

(d) *No compensation for Questrade holdings*: In January 2009, Questrade launched its “Mutual Fund Maximizer” program. Under that program, Questrade rebated trailing commissions to its customers less the administrative costs for managing the program. Accordingly, Questrade clients have no or minimal losses on the case theory advanced in the action. Attached hereto as **Exhibit “E”** is a submission from Questrade to Canadian securities administrators that explains its rebate program.

Other components of the proposed Distribution Protocol

83. Other important components of the proposed Distribution Protocol include:

- (a) that the objective of the proposed Distribution Protocol is to cost-effectively and efficiently distribute the Net Settlement Amount among Authorized Claimants, while avoiding double compensation;
- (b) that the Administrator will administer all claims pursuant to the terms of the Distribution Protocol, the Settlement Agreement and orders of the Court;
- (c) that the Administrator shall employ secure web-based systems whenever possible. This includes requiring all Claimants to submit a claim using the online portal created by the Administrator unless the Claimant does not have internet access or otherwise has a good reason for submitting a paper claim;
- (d) Claimants will have until 180 days after Second Notice is first disseminated to make a claim;

- (e) the Administrator will have discretion to correct minor omissions or errors in submitted Claims;
- (f) Claimants may contact the Administrator or Siskinds, at no charge, with questions about completing a claim;
- (g) Claimants may utilize a third-party service of their own choosing to file a Claim but will be responsible for any and all associated fees and expenses;
- (h) payment to Authorized Claimants will be made by cheque or e-transfer. Authorized Claimants will have six months to cash a cheque and one month to accept an e-transfer;
- (i) in the event of a denial of a claim by the Administrator and subject to limitations described below, a Claimant can request reconsideration of their claim by the Administrator within 45 days of receiving a notice from the Administrator that their claim has been denied in its entirety. If the claim continues to be denied in its entirety after a request for reconsideration, Claimants will have a final right of appeal to a Court-appointed arbitrator. Claimants will not be able to make a request for reconsideration to the Administrator or have an appeal right:
 - (i) where the Claim is allowed but the Claimant disputes the amount of the Trailing Commissions Paid or their individual compensation;
 - (ii) for Claims filed after the Claims Filing Deadline; and
 - (iii) where the appeal or request for reconsideration, if successful, will result in the Claimant's Trailing Commissions Paid being less than \$500; and

(j) in the event that there is money remaining six months after the initial distribution, the Administrator will make a second distribution to Authorized Claimants to the extent it is economical to do so and, to the extent it is not, distribute the money *cy-près*.

84. The proposed *cy-près* recipient is the Osgoode Hall Law School Investor Protection Clinic (“**Osgoode IPC**”). It is a pro bono clinic that provides free legal advice to retail investors who cannot afford a lawyer. The Osgoode IPC also undertakes research to help regulators, policymakers and courts understand issues facing retail investors. It undertakes investor education initiatives and develops educational resources for retail investors. Any *cy-près* grant that goes to the Osgoode IPC will be used to support these initiatives.

85. The Class Members in this action consist largely of do-it-yourself retail investors. This is the precise group that the Osgoode IPC tries to help through its various initiatives. I expect that services provided by the Osgoode IPC will benefit at least some Class Members as result. A *cy-près* distribution to the Osgoode IPC is consistent with the access to justice rationale underpinning the *Class Proceedings Act, 1992* because of the pro bono legal services it provides and its advocacy efforts on behalf of retail investors.

H. APPOINTMENT OF VERITA AS ADMINISTRATOR

86. After soliciting bids from three experienced class action administrators and considering their experience, their respective bids and their ability to engage in the significant data management and processing this administration will entail, I believe it is in the best interests of Class Members to appoint Verita as Administrator to:

(a) facilitate dissemination of Second Notice;

- (b) manage and process Client Information to calculate Class Members' entitlements under the Distribution Protocol;
- (c) set up and manage the online claims portal;
- (d) receive and review claims from Class Members; and
- (e) administer the Settlement Amount in accordance with the Distribution Protocol and Settlement Agreement, subject to the Court's approval of both.

87. I note that Verita formerly operated under the RicePoint brand. Verita, under the RicePoint brand, was appointed as the administrator of settlements numerous times by courts in Ontario and other provinces.

88. Verita has provided Siskinds with a quote for the administration that estimates costs in the range of \$165,966 to \$1,159,045 (not including notice costs or taxes). The range in estimated costs varies depending on the number of claims made (5,000 on the low end of the estimate and 100,000 on the high end), the extent to which correspondence (and in particular the letters sent for the streamlined claims process) is via email or regular mail, and the number of payments made via e-transfers versus cheques because cheques are more expensive to issue.

89. The estimate does not account for processing and managing the Client Information that Verita will undertake if appointed. Verita has provided an estimate of \$25,000 for that task. The actual cost could vary depending on the quality of the Client Information received.

90. In my opinion, the costs of the administration are proportionate and reasonable when considered in relation to the size of the settlement, the complexity of the settlement and the number of claims that will likely be processed. The projected cost is also consistent with the quotes received from other potential administrators.

91. We are confident in Verita's ability to effectively and efficiently act as Administrator. We recommend the appointment of Verita as Administrator.

I. APPROVAL OF CLASS COUNSEL FEES AND DISBURSEMENTS

Overview of the request

92. Approval is being sought for:

- (a) Class Counsel Fees in the amount of \$17,920,000;
- (b) applicable taxes on the Class Counsel Fees of \$2,329,600;
- (c) Class Counsel Disbursements of \$299,627.99; and
- (d) applicable taxes on the Class Counsel Disbursements of \$38,840.09.

The co-counsel arrangement between Siskinds and Bates Barristers

93. By agreement in January 2018, Siskinds and Bates Barristers agreed to work together to litigate the action as co-counsel, share the risk of the litigation and share any fees that may be awarded in the event of success.

94. In April 2020, Bates Barristers resigned as counsel for the Class. In May 2020, Siskinds served a Notice of Change of Lawyer. At the time of Bates Barristers' resignation in April 2020, Siskinds and Bates Barristers reached an agreement on, among other things, the allocation of any counsel fees that may be awarded in the action, which preserved the allocation set out in the January 2018 agreement.

95. The April 2020 agreement was amended and restated in March 2024. A copy of the Amended and Restated Agreement dated March 8, 2024 is attached hereto as **Exhibit "F"**.

96. The Amended and Restated Agreement provides for fees awarded to be shared in the event of success based on an allocation that “is intended to represent a reasonable *quantum meruit* fee payment to Bates for cooperation and assistance provided to Siskinds in the development and conduct of the Class Actions”, which include this action. Particulars of the contributions of Bates Barristers are described in paragraph 97 and elsewhere regarding this action and regarding the six other related actions.

97. Prior to Bates Barristers’ resignation as co-counsel for the Plaintiff, Bates Barristers played an important role in the advancement of this action, including involvement in the development of the case theory underpinning the action, the preparation of the pleading, the preparation of evidence for the certification motion, cross-examinations on the affidavits filed on the certification motion (including Mr. Bates conducting the cross-examination of the Defendant’s deponent, Huck Oon, on his affidavit), the preparation of written submissions on the certification motion, making oral submissions at the hearing of the certification motion in January 2020, and other efforts described in paragraph 120 below.

Retainer Agreement

98. Siskinds entered into a Contingency Fee Retainer Agreement with Mr. Westwood on October 23, 2020 (“**Retainer Agreement**”). A copy of the Retainer Agreement is attached to Mr. Westwood’s affidavit as Exhibit “A”.

99. Prior to entering into the Retainer Agreement with Mr. Westwood, Siskinds and Bates Barristers were retained by the former representative plaintiff, Gary Stenzler. The retainer agreement with Mr. Stenzler contained the same fee terms as the Retainer Agreement with Mr. Westwood.

100. The Retainer Agreement provides for a contingency fee of 28% of the “Amount Recovered” plus applicable taxes. This is \$19.67 million (28% multiplied by \$70.25 million), which is \$1.75

million higher than the fee being sought (\$17.92 million). The \$17.92 million figure equates to approximately 25.51% of the \$70.25 million.

101. We agreed to reduce our fee request by \$1.75 million from the maximum that could be made under the Retainer Agreement to facilitate the resolution of the action. In the late stages of settlement negotiations, an impasse arose. TDAM offered to resolve both this action and the *Aggarwal* Action for \$77 million, of which \$72 million was allocated to this action and \$5 million was allocated to the *Aggarwal* Action. Mr. Aggarwal was not prepared to settle at that number and TDAM was not prepared to pay the additional amount that Mr. Aggarwal was seeking for his action. To help resolve the impasse, \$1.75 million of the \$72 million allocated to this action was re-allocated to the *Aggarwal* Action and we undertook to Mr. Westwood to reduce our maximum fee request by \$1.75 million to neutralize the effect of the reduced settlement amount on Class Members. In fact, the fee reduction was greater than \$1.75 million when compared against the maximum fee entitlement on a settlement of \$72 million.

102. In this context, Bates Barristers agreed to reduce its percentage entitlement under the April 2020 agreement discussed above. The reduced percentage is reflected in the Amended and Restated Agreement dated March 8, 2024 discussed above. Bates Barristers' compromise facilitated the breaking of the impasse in the settlement discussions.

103. The Retainer Agreement also provides that Siskinds can seek reimbursement of disbursements incurred and interest on disbursements. The interest is to be calculated based on the total at the end of each six-month period and shall accrue at the post-judgment interest rate set by the Ministry of the Attorney General under the *Courts of Justice Act and Publication of Postjudgment and Prejudgment Interest Rates* regulation. For the benefit of the Class, we are forgoing interest on the claimed disbursements, which we conservatively calculate to be \$30,128.91.

104. Consistent with the terms of the Retainer Agreement, costs awarded in relation to the certification motion of \$75,000 and the Defendant's motion for leave to appeal the certification order of \$10,000 are not included in the calculation of the fee request. The entirety of those cost awards accrues to the benefit of Class Members.

Risks assumed supporting the fee request

105. Prior to the commencement of the action, Siskinds and Bates Barristers assumed the risk of being paid their fees and reimbursed for disbursements incurred only if the action was successful.

106. That risk was significant. The action is a complex class action against a well-resourced institutional defendant that had an uncertain outcome at the outset. In our experience, the cost in legal fees incurred and disbursements expended in prosecuting a complex class action like this one can be very large. Class actions of this nature are typically hard fought and can be protracted with multiple interlocutory steps and appeals.

107. Some examples help demonstrate that before a complex class action is commenced in Ontario, it is anticipated that the prosecution of the case will be hard fought and expensive, will often take a long time and will involve significant risks to the recovery of fees and disbursements by class counsel.

108. The first example is *Fischer v. IG Investment Management Ltd. et al.*, otherwise known as the "market timing" class action. It involves claims against a number of mutual fund companies alleging that the companies failed to stop certain trading activity in their mutual funds that harmed long-term investors in the fund. The action was commenced in 2006. The certification motion was a protracted battle, involving decisions from the Superior Court, the Divisional Court, the Court of Appeal and the Supreme Court of Canada between 2010 and 2013. The action went to a common issues trial on liability in 2022, approximately 17 years after the commencement of the action. In a trial decision released on February 13, 2023, the plaintiffs were partly successful in their claims against the two

remaining mutual fund company defendants. The plaintiffs lost on the breach of fiduciary duty claim but won on the negligence claim. The issue of damages still needs to be assessed by the trial judge, and appeals still need to be decided. Assuming the plaintiffs succeed at those later stages, the class members will not receive compensation from the remaining defendants for a number of years. That will likely be more than 20 years after the commencement of the action. Similar claims against three other mutual fund companies were settled a number of years ago, resulting in early compensation to the class members in those cases.

109. The second is *Rahimi v SouthGobi Resources Ltd. et. al.*, a case in which Siskinds acts as class counsel. That action is a secondary market misrepresentation case. It involves SouthGobi's restatement of its financials in November 2013. The action was commenced in January 2014 and has been hotly contested since that time, involving a significant commitment of counsel time and resources.

110. In *SouthGobi*, the motion for leave to assert the secondary market misrepresentation right of action under the *Securities Act* was argued over three days in 2015. The plaintiff was partially successful on those motions. Both the plaintiff and defendants appealed. The plaintiff was successful on the appeal to the Court of Appeal. Leave to appeal to the Supreme Court of Canada was refused in May 2018. The case was subsequently certified later in 2018.

111. The parties have since that time conducted examinations for discovery. Productions in the case are in the tens of thousands of pages. There have been multiple interlocutory motions brought, including on discovery and abuse of process issues. The action was originally set down to be heard in the Fall of 2022. Those trial dates were ultimately adjourned. It is now expected that the trial will be heard in late 2025 or early 2026, approximately 12 years after it was commenced.

112. The third case is *Swisscanto Fondsleitung AG v BlackBerry Limited et al.*, a case in which Siskinds also acts as class counsel. It is a secondary market misrepresentation case that alleges misrepresentations related to BlackBerry's revenue recognition policy. The action was commenced in December 2013. As with *SouthGobi*, the case against BlackBerry has been hotly contested necessitating a significant investment of counsel time and resources over an extended period.

113. In the BlackBerry case, leave was granted to assert the statutory right of action under the *Securities Act* in 2015 following a two-day hearing. Certification was granted in January 2016. Following the certification and leave motions, the parties engaged in extensive written and oral discoveries, including the production of tens of thousands of documents. A contested production motion was fully briefed but ultimately resolved on the eve of the hearing. The action was set down for trial this summer, which is well over 10 years since the action was commenced.

114. The fourth and fifth examples are class actions that were commenced after the commencement of this action. They are nevertheless illustrative of the risk of failure in complex cases of this nature.

115. The fourth example is the *Frayce* Action. The *Frayce* Action was a proposed class action brought against Discount Brokers, including TDAM's affiliated Discount Broker TDDI, on behalf of a class that overlaps with the Class in this action. The *Frayce* Action sought to recover trailing commissions paid to Discount Brokers from the Discount Brokers themselves. Certification was refused in the *Frayce* Action by Justice Belobaba on the basis of an argument that the Discount Brokers' conduct was not illegal. Justice Belobaba was the same judge who heard the certification motion in this action. The no illegality argument has also been advanced by TDAM in this action (as described at paragraphs 38 to 40 above). Although the case theories are substantially different, the *Frayce* Action's failure at certification on a defence argument that is also advanced in this action

demonstrates the risk that class counsel will not recover their investment in time and disbursements when taking on litigation of this type.

116. The fifth example is a British Columbia class action, *Turpin v. TD Asset Management Inc.* That case involved claims against TDAM (the same defendant as in this action) alleging that it engaged in “closet indexing”, which means that mutual funds that are marketed as being actively-managed are nothing more than index-tracking funds, which allowed TDAM to charge higher fees than it could for an index fund, but essentially with the same investment returns as an index fund. After being certified on consent, the action proceeded to a trial of the common issues in 2021 and 2022. In a decision released on June 28, 2022, the trial judge dismissed the claims against TDAM in their entirety. The class members recovered nothing, and class counsel did not recover their significant investment in time and disbursements.

117. Bates Barristers was co-counsel for the plaintiffs in both the *Frayce* Action and *Turpin*. Bates Barristers made a significant investment of resources in those cases, all of which was lost when the *Frayce* Action was dismissed at certification and *Turpin* was dismissed at trial.

118. The risks at the outset of the action were similar to those that arose in the examples given and are typical of the risks arising in complex class actions against large institutional defendants. At the outset, it was anticipated that:

- (a) the litigation would be hard fought by a defence firm that is an expert in the defence of class actions of this nature;
- (b) there would be significant resistance to the certification motion;
- (c) if successful at certification, following appeals, there would be productions of tens of thousands of documents and lengthy examinations for discovery;

- (d) there would likely be hard-fought interlocutory motions to resolve discovery issues;
- (e) if the case did not settle, there would be one or two lengthy common issues trials with an uncertain outcome; and
- (f) if third party funding was not secured, there would be exposure to adverse costs awards, including the fees and disbursements of defence counsel, which would be considerable, most certainly in the millions of dollars.

119. Many of those risks have been borne out in this action. It was commenced more than six years ago. Certification was granted following a hotly-contested motion. Leave to appeal that decision was sought but refused. The parties engaged in protracted negotiations regarding the proper scope of discovery and were only able to resolve many of the issues on the eve of a hearing. The parties reached a Settlement Agreement but only after an extremely complex and protracted set of settlement negotiations that spanned over two years, requiring a considerable devotion of resources.

Efforts to Date

120. Siskinds and Bates Barristers (prior to its resignation) have performed significant work on behalf of Class Members. They:

- (a) undertook an investigation into TDAM's alleged misconduct, including a review of TDAM's disclosure documents, TDAM's constating documents and a review of consultations undertaken by securities regulators;
- (b) undertook substantial research and analysis to develop the rights of action advanced (at the outset of the litigation and on an ongoing basis);
- (c) prepared the Statement of Claim and made amendments thereto;
- (d) prepared voluminous evidentiary materials for the certification motion;

- (e) cross-examined TDAM's affiant on the certification motion and defended TDAM's cross-examination of Mr. Stenzler;
- (f) prepared lengthy written submissions and successfully argued the certification motion;
- (g) prepared written materials in response to TDAM's request for leave to appeal the certification motion;
- (h) negotiated a discovery plan and schedule for productions, and filed material for a case management conference, which led to the resolution of discovery issues on the eve of the conference;
- (i) brought a successful motion to stay the *Aggarwal* Action (and other 2022 Actions);
- (j) undertook extensive negotiations, including multiple mediation sessions, with TDAM, the plaintiff in the *Frayce* Action and the plaintiff in the *Aggarwal* Action;
- (k) obtained partial documentary production from TDAM and started reviewing those documents, including documents concerning the quantum of trailing commissions paid to Discount Brokers;
- (l) obtained a damages opinion from Errol Soriano for the mediation; and
- (m) responded to Class Member inquiries.

Division of Siskinds' Fees and Disbursements

121. Siskinds' docketed time and disbursements discussed below comes from two sources:

- (a) Siskinds has maintained a matter number for work and disbursements that are exclusively related to this action ("**TDAM Matter**"); and

(b) this action is one of seven cases commenced by Siskinds against the trustees and managers of mutual funds related to their payment of trailing commissions to Discount Brokers. Throughout the litigation of this action and the Other 2018 Actions, Siskinds has spent docketed time and incurred disbursements that are related to, and for the benefit of, all seven cases jointly as opposed to any one of the individual seven cases. This includes time spent on legal and factual research and analysis, the motions to stay the 2022 Actions, and other efforts to respond to and manage overlapping litigation generally (*e.g.* the *Frayce* Action and 2022 Actions). The time that Siskinds has spent on such matters has been docketed to a matter number (“**Joint Matter**”) that is separate from the TDAM Matter. Similarly, disbursements of this kind have been allocated to the Joint Matter. (Siskinds has also maintained separate matter numbers for each of the six Other 2018 Actions, which are separate from the TDAM Matter and the Joint Matter.)

Fees Financed to Date

(i) Siskinds

122. Up to and including November 25, 2024, Siskinds has docketed fees of \$2,345,501 plus applicable taxes on the TDAM Matter, representing 4,823.4 hours.

123. Up to and including September 11, 2024 (when the Settlement Agreement was executed), Siskinds has docketed fees of \$1,014,081 plus applicable taxes on the Joint Matter, representing 1,882.3 hours. If that time is divided equally between all seven cases, then \$144,868.71 (pre-tax) is attributable to this action.

124. The hourly rates and hours expended by Siskinds, before applicable taxes, by the primary lawyers, students-at-law and law clerks up to and including November 25, 2024 on the TDAM Matter are as follows:

LAWYER/CLERK	YEAR OF CALL	HOURS	HOURLY RATE	TOTAL
Charles Wright	ON, 1995	2.1	\$950.00	\$1,995.00
		20.9	\$975.00	\$20,377.50
		159.3	\$1,000.00	\$159,300.00
		21.7	\$1,050.00	\$22,785.00
Michael Robb	ON, 2002	108.4	\$750.00	\$81,300.00
		38	\$800.00	\$30,400.00
		58.45	\$850.00	\$49,682.50
		36.5	\$900.00	\$32,850.00
		125.1	\$925.00	\$115,717.50
Anthony O'Brien	ON, 2008 BC, 2022	363.3	\$500.00	\$181,650.00
		444.4	\$600.00	\$266,640.00
		175.6	\$650.00	\$114,140.00
		216.60	\$700.00	\$151,620.00
		401.8	\$725.00	\$291,305.00
Eva Markowski-Belmont	ON, 2018	23.8	\$215.00	\$5,117.00
		128.8	\$300.00	\$38,640.00
		322.6	\$450.00	\$145,170.00
		19.7	\$500.00	\$9,850.00
Garett Hunter	ON, 2017 BC, 2021	194.4	\$200.00	\$38,880.00
		235.8	\$275.00	\$64,845.00
		94.4	\$325.00	\$30,680.00
		29.5	\$375.00	\$11,062.50
		116.5	\$425.00	\$49,512.50

LAWYER/CLERK	YEAR OF CALL	HOURS	HOURLY RATE	TOTAL
		134.9	\$450.00	\$60,705.00
		162.2	\$450.00	\$72,990.00
Genevieve Cantin	ON, 2015	58.2	\$450.00	\$26,190.00
		8.1	\$500.00	\$4,050.00
Allison McBurney	ON, 2011	64	\$325.00	\$20,800.00
Dawn Sullivan	ON, 1999	0.8	\$500.00	\$400.00
		1.2	\$600.00	\$720.00
		68	\$650.00	\$44,200.00
Gigi Pao	ON, 2020 BC, 2024	20.8	\$165.00	\$3,432.00
		7.2	\$175.00	\$1,260.00
		100.2	\$200.00	\$20,040.00
		24.6	\$250.00	\$6,150.00
		121.1	\$300.00	\$36,330.00
Diana Stepner	Student-at-law ON, 2023	47.3	\$190.00	\$8,987.00
		6.3	\$220.00	\$1,386.00
Donna McEvoy	Law Clerk	26.4	\$170.00	\$4,488.00
		41	\$200.00	\$8,200.00
		4.5	\$210.00	\$945.00
		24.6	\$220.00	\$5,412.00
		52.3	\$245.00	\$12,813.50
Britanny Basra	Law Clerk	18.5	\$135.00	\$2,497.50
		55.5	\$150.00	\$8,325.00
		3.7	\$160.00	\$592.00

125. The hourly rates and hours expended by Siskinds, before applicable taxes, by the primary lawyers, students-at-law and law clerks up to and including September 11, 2024 on the Joint Matter are as follows:

LAWYER/CLERK	YEAR OF CALL	HOURS	HOURLY RATE	TOTAL
Michael G. Robb	ON, 2002	2.4	\$700.00	\$1,680.00
		8.1	\$750.00	\$6,075.00
		15.3	\$850.00	\$13,005.00
		73.3	\$900.00	\$65,970.00
		200.3	\$925.00	\$185,277.50
Anthony O'Brien	ON, 2008 BC, 2022	88.9	\$450.00	\$40,005.00
		92	\$500.00	\$46,000.00
		88.8	\$650.00	\$57,720.00
		117.2	\$700.00	\$82,040.00
		334.1	\$725.00	\$242,222.50
Eva Markowski-Belmont	ON, 2018	43.2	\$500.00	\$21,600.00
		0.9	\$550.00	\$495.00
Garett M. Hunter	ON, 2017 BC, 2021	36.1	\$165.00	\$5,956.50
		33.9	\$200.00	\$6,780.00
		8.1	\$325.00	\$2,632.50
		14.7	\$375.00	\$5,512.50
		32.1	\$425.00	\$13,642.50
		186.6	\$450.00	\$83,970.00
Genevieve Cantin	ON, 2015	0.5	\$450.00	\$225.00

LAWYER/CLERK	YEAR OF CALL	HOURS	HOURLY RATE	TOTAL
		36.6	\$500.00	\$18,300.00
Gigi Pao	ON, 2020 BC, 2024	7.8	\$200.00	\$1,560.00
		4.7	\$250.00	\$1,175.00
		117.8	\$300.00	\$35,340.00
Katherine Shapiro	ON, 2022	51	\$210.00	\$10,710.00
		58.6	\$240.00	\$14,064.00
Diana Stepner	Student-at-law ON, 2023	47.2	\$190.00	\$8,968.00
		0.4	\$220.00	\$88.00
Zohra Bhimani	ON, 2023 BC, 2024	30.3	\$225.00	\$6,817.50
Donna McEvoy	Law Clerk	9.1	\$200.00	\$1,820.00
		4.5	\$210.00	\$945.00
		18.6	\$220.00	\$4,092.00
		74.9	\$245.00	\$18,350.50

(ii) Bates Barristers

126. I am informed by Paul Bates of Bates Barristers and believe that Bates Barristers has docketed fees of \$1,041,360 plus applicable taxes on work that is exclusively or partly related to this action.

127. I am informed by Mr. Bates and believe that the hourly rates and hours expended by Bates Barristers are as follows:

LAWYER	YEAR OF CALL	HOURS	HOURLY RATE	TOTAL
Paul Bates	1983	867.8	\$1,200	\$1,041,360

128. I am further informed by Mr. Bates and believe that Bates Barristers' above-noted docketed time includes time spent on this action alone and time spent for the benefit of all seven actions (including this action). It excludes time spent specifically on one of the Other 2018 Actions. I am informed by Mr. Bates and believe that the above-noted docketed time can be categorized as follows:

- (a) 508.35 hours (equating to \$610,020 pre-tax) relate specifically to this action; and
- (b) 359.45 hours (equating to \$431,340 pre-tax) relate to, and were for the benefit of, all seven cases (including this action) jointly as opposed to any one of the individual seven cases.

If that time is divided equally between all seven cases, then \$61,620 (pre-tax) is attributable to this action.

Class Counsel Disbursements

(i) Siskinds

129. Up to and including November 11, 2024, Siskinds has incurred disbursements of \$296,665.24 plus applicable taxes on the TDAM Matter. The following chart provides a breakdown of those disbursements by category:

Disbursement	Amount
Taxable Disbursements	
Courier	\$179.91
Copies	\$14,086.54
Long Distance Telephone Charges	\$402.04
Postage	\$38.08
Binding Supplies	\$25.85
Research/Resource Material	\$17,176.24

Disbursement	Amount
News Releases/Media	\$2,830.21
Agent’s Fees and Disbursements	\$4,786.98
Bank Fees, Corporate Searches and Misc. Charges	\$23.00
Expert Fees	\$202,646.25
Mileage/Travel/Meals	\$11,569.48
Mediation/Arbitration Fees	\$14,025.00
Notice Fees	\$23,128.96
Transcripts	\$1,285.10
E-Discovery Services and Data Hosting in Relativity	\$3,789.60
Parking	\$132.00
TOTAL TAXABLE DISBURSEMENTS	\$296,125.24
HST ON TAXABLE DISBURSEMENTS	\$38,496.28
Non-Taxable Disbursements	
Statement of Claim Fee	\$220.00
Notice of Motion Fee	\$320.00
TOTAL NON-TAXABLE DISBURSEMENTS	\$540.00
TOTAL DISBURSEMENTS (TAXES INCLUDED)	\$335,161.52

130. Up to and including September 11, 2024 (when the Settlement Agreement was executed), Siskinds has incurred disbursements of \$5,256.75 plus applicable taxes on the Joint Matter. The following chart provides a breakdown of those disbursements by category:

Disbursement	Amount
Taxable Disbursements	

Disbursement	Amount
Copies	\$606.75
Research/Resource Material	\$3,331.70
Agent's Fees and Disbursements	\$1,113.00
Mileage/Travel/Meals	\$205.30
TOTAL TAXABLE DISBURSEMENTS	\$5,256.75
HST ON TAXABLE DISBURSEMENTS	\$683.38
TOTAL DISBURSEMENTS (TAXES INCLUDED)	\$5,940.13

131. If those disbursements on the Joint Matter are divided equally between all seven cases, then \$750.96 (plus taxes) is attributable to this action.

132. In total, between the TDAM Matter and the Joint Matter, Siskinds has incurred disbursements of \$297,416.20 (\$296,665.24 plus \$750.96) plus applicable taxes.

133. Most of the disbursements incurred on the TDAM Matter were for the expert fees of Ermanno Pascutto (\$44,500.00) and Errol Soriano (\$157,646.25).

134. Mr. Pascutto is a senior securities regulator and legal practitioner. He was Executive Director and head of staff of the Ontario Securities Commission between 1984 and 1989. He was the founding director and Vice-Chairman of the Hong Kong Securities and Futures Commission between 1989 and 1994. He was an independent director of Market Regulation Services Inc., a predecessor to the Investment Industry Regulatory Organization of Canada. In 2008, he founded FAIR Canada, an independent non-profit organization and registered charity, dedicated to enhancing the rights of Canadian shareholders and investors. He now consults on securities regulation in Canada and Hong Kong.

135. Mr. Pascutto prepared an expert affidavit for the certification motion on the history and rationale for the payment of trailing commissions to Discount Brokers, including the positions taken by Canadian securities regulators. Mr. Pascutto's affidavit also replied to the affidavit TDAM filed on the certification motion from Mr. Oon. Mr. Pascutto's report informed the Plaintiff's position at the certification motion and was relied on in written submissions. Mr. Pascutto's report was also relied on at the mediation. The disbursements incurred on Mr. Pascutto's expert work were necessary for the successful result achieved for Class Members in the action.

136. Mr. Soriano is the managing director of KSV Advisory's Valuation and Disputes practice. He is a Chartered Professional Accountant (1987), Chartered Business Valuator (1991) and Certified Fraud Examiner (1993). Mr. Soriano and his team at KSV Advisory prepared an expert damages report for the mediation. Mr. Soriano and his team also played an ongoing consulting role on damages issues throughout the lengthy mediation process. After the Settlement Agreement was reached, Mr. Soriano and his team have assisted with understanding the data TDAM will provide the Administrator for purposes of the claims process and the processing of the data that will need to be undertaken. The efforts of Mr. Soriano and his team were necessary for the successful result achieved in the action for Class Members.

137. The remaining disbursements were incurred primarily on engaging Mr. Wiesenfeld as mediator, travel, document storage and costs associated with preparing and filing motion materials.

(ii) Bates Barristers

138. I am informed by Mr. Bates and believe that \$2,211.79 in disbursements plus applicable taxes of \$246.18 have been incurred by Bates Barristers. I am informed by Mr. Bates and believe that, of the pre-tax amount, \$2,191.69 was for travel expenses and \$20.10 was for telephone expenses.

Anticipated Fees and Disbursements to be Incurred

139. We estimate that we will spend time an additional 350 to 500 hours to complete the administration of the Settlement, if the Settlement Agreement is approved by this Court. This additional time will be spent to:

- (a) prepare for and attend the approval hearing on December 9, 2024;
- (b) assist in the dissemination of Second Notice;
- (c) liaise with the Administrator to ensure the fair and efficient administration of the Settlement Agreement and Distribution Protocol, which we anticipate will occupy the bulk of our additional time; and
- (d) respond to inquiries from Class Members and their lawyers, if applicable, regarding the Settlement Agreement and the Distribution Protocol.

J. MR. WESTWOOD'S HONORARIUM REQUEST

140. Mr. Westwood is seeking an honorarium in the amount of \$10,000.

141. Mr. Westwood took over from Mr. Stenzler as representative plaintiff after retaining Siskinds in October 2020.

142. Since his appointment as representative plaintiff, Mr. Westwood has played an active role in the litigation. He played a particularly important role in the negotiation of the Settlement. Mr. Westwood reviewed and provided comments on the mediation briefs that were exchanged. He virtually attended a mediation on May 3, 2023. Mr. Westwood engaged in detailed discussions and correspondence with Siskinds about the ongoing negotiations and how different offers would impact the recovery of Class Members. Mr. Westwood carefully considered our recommendations and provided instructions in the best interests of the Class.

143. Mr. Westwood has also subjected himself to greater scrutiny than other Class Members in taking on the role of representative plaintiff on behalf of Class Members. Mr. Westwood stepped up to fill the gap created by the departure of the previous representative plaintiff. In doing so, he ensured that the action would continue, ultimately leading to the successful resolution achieved for Class Members.

144. I believe the requested honorarium would be appropriate considering the efforts expended by Mr. Westwood on behalf of Class Members and the amount of the honorarium considered in the context of the result achieved.

K. APPROVAL OF AN INTERIM PAYMENT OF THE FUNDING COMMISSION

145. The Funding Agreement was approved by Order of Justice Belobaba dated June 20, 2019 (“**Funding Order**”). A copy of the Funding Order is attached hereto as **Exhibit “G”**.

146. A copy of the Funding Agreement is attached hereto as **Exhibit “H”**. The sum of disbursements to be funded by the Funder is redacted in the copy of the Funding Agreement that is attached to this affidavit. These redactions were also made to the version of the Funding Agreement before Justice Belobaba on the motion to approve the Funding Agreement.

147. Under the terms of the Funding Agreement, the “Commission” payable to the Funder is 7% of the “Net Resolution Sum”, which is defined as the “Resolution Sum” less “(i) any Funding paid by the Funder in this Proceeding; (ii) Lawyers’ fees and disbursements, including HST; and (iii) Administration Expenses”.

148. The “Administration Expenses” are all fees, disbursements, expenses, costs and taxes and other amounts incurred or payable relating to implementation of the settlement. That amount cannot be quantified with certainty until the conclusion of the administration of the Settlement Agreement,

and as such the final amount of the “Commission” payable to the Funder cannot be finally determined until the conclusion of the administration.

149. We propose that an interim payment of the Funding Commission be made to the Funder based on an estimate of the “Administration Expenses” provided to Siskinds by the Administrator (with a significant built-in cushion) and assuming Class Counsel Fees, Class Counsel Disbursements and taxes are approved as requested. The amount of the interim payment is expected to be less than the amount of the final “Commission”, such that a further payment to the Funder is expected at the conclusion of the administration.

150. Siskinds estimates the Funder’s Commission as \$3,489,761.23, calculated as follows:

(a) Net Resolution Sum equals:

(i) Resolution Sum (\$70,250,000 plus estimated interest of \$2,191,800);

less:

(ii) Class Counsel Fees including tax of \$20,249,600 (assuming they are approved as requested);

(iii) Class Counsel Disbursements including tax of \$338,468.08 (assuming they are approved as requested); and

(iv) estimated Administration Expenses of \$2,000,000 (Verita’s estimate with a significant built-in cushion),

which equals \$49,853,731.92; and

(b) Commission equals the above Net Resolution Sum multiplied by 7%.

151. We believe an appropriate interim commission is \$3,250,000 or approximately 93.13% of a conservative estimate of the Funder's Commission.

152. In our experience, it takes more than a year after a settlement is approved for funds to be distributed. We believe that an interim payment to the Funder is fair, and will encourage the participation of third-party financing in future cases, which in turn will facilitate access to justice.

L. RELEASE OF THE FUNDER'S SECURITY ON THE EFFECTIVE DATE

153. On or around July 15, 2019, the Funder paid \$75,000 into court by electronic funds transfer to the Accountant of the Superior Court of Justice ("**Accountant**") as security for costs in the action pursuant to the Funding Order.

154. On or around October 21, 2020, the Funder paid \$325,000 into court by electronic funds transfer to the Accountant as security for costs in the action pursuant to the Funding Order.

155. Attached hereto as **Exhibit "I"** is a copy of a Statement of Account dated as of October 31, 2024 provided by the Accountant in respect of the security deposited by the Funder.

156. Based on our experience, where similar language to the Funding Order is used, the Accountant will require a court order to release funds paid as security.

157. The Plaintiff is requesting an order that the \$400,000 paid into court as security for costs by the Funder be released to the Funder forthwith after the Effective Date of the Settlement Agreement.

At that time, the action will be at an end and the rationale for the Funder posting security for costs related to the action will no longer exist.

Affirmed remotely by Charles M. Wright stated as being located in the City of La Quinta, State of California, United States of America, before me at the Town of Whitby, in the Province of Ontario on November 28, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



DocuSigned by:

Donna McCray

Donna Lynn McCray, Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

Signed by:

CHARLES M. WRIGHT

This is Exhibit "A" mentioned and referred to in the Affidavit of Charles M. Wright AFFIRMED/SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. The affiant was located in the City of La Quinta, in the State of California, in the United States of America, and the commissioner, Donna Lynn McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) Tuesday _____, the 1st day
)
JUSTICE JASMINE T. AKBARALI) of October _____, 2024

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, amending the class definition in the Action, approving the notices of settlement approval hearing and the method of dissemination of the notices, and setting a supplemental opt-out process and deadline, was heard on September 27, 2024 at 10:00 am EST.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated September 11, 2024 attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the Defendant consents to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the class definition set out in paragraph 3 of the certification Order of the Honourable Justice Belobaba dated February 27, 2020 is amended, for settlement purposes, to the following (“**Class**” or “**Class Member**”):

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to September 11, 2024, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.

“Excluded Persons” means: (a) the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Belobaba dated December 14, 2021 providing for certification notice and an opt-out process; or (c) any Person who would otherwise be a Class Member and who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 but who validly excludes themselves from the Action in accordance with this Order.

5. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval hearing (“**First Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.

6. **THIS COURT ORDERS** that the plan of dissemination for the First Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the First Notice shall be disseminated in accordance with the Plan of Notice.
7. **THIS COURT ORDERS** that those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (“**Eligible Supplemental Opt-Out Party**” or “**Eligible Supplemental Opt-Out Parties**”) may opt out of this action in accordance with this Order.
8. **THIS COURT ORDERS** that the supplemental opt-out form (“**Supplemental Opt-Out Form**”), substantially in the form attached as Appendix “A” to the long-form First Notice, is hereby approved.
9. **THIS COURT ORDERS** that the deadline for Eligible Supplemental Opt-Out Parties to opt out of the action (“**Supplemental Opt-Out Deadline**”) is the date that is sixty (60) days after the day on which the First Notice is first published.
10. **THIS COURT ORDERS** that any Eligible Supplemental Opt-Out Party who opts out of this class proceeding by the Supplemental Opt-Out Deadline, by complying with the instructions set out in the long-form First Notice and fully completing a Supplemental Opt-Out Form, shall not be a Class Member on and after the date that such person opts out of the class proceeding.
11. **THIS COURT ORDERS** that, subject only to the opt-out right provided to Eligible Supplemental Opt-Out Parties in accordance with paragraphs 7 to 10 of this Order, the period for Class Members to opt out of this action expired as of April 8, 2022.
12. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection to, or comment on, the settlement, the Distribution Protocol, or the request for approval of

Class Counsel Fees and Class Counsel Disbursements shall deliver a written statement to Class Counsel, at the address indicated in the First Notice, no later than 21 calendar days prior to the hearing of the settlement approval motion.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

The Honourable Justice Akbarali

WESTWOOD v. TD ASSET MANAGEMENT INC.

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(MOTION FOR SETTLEMENT PRE-APPROVAL ORDERS)**

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Lawyers for the Plaintiff

This is Exhibit "B" mentioned and referred to in the Affidavit of Charles M. Wright AFFIRMED/SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. The affiant was located in the City of La Quinta, in the State of California, in the United States of America, and the commissioner, Donna Lynn McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, A Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

SETTLEMENT AGREEMENT

Made as of September 11, 2024

Between

PETER WESTWOOD

(“Plaintiff”)

and

TD ASSET MANAGEMENT INC.

(“Defendant”)

**SETTLEMENT AGREEMENT
TABLE OF CONTENTS**

RECITALS1

SECTION 1 - DEFINITIONS.....3

SECTION 2 – APPROVAL AND NOTICE PROCESS10

 2.1 Commercially Reasonable Efforts10

 2.2 Motion for First Order10

 2.3 Motion for Dismiss Order and Distribution Order10

 2.4 Pre-Motion Confidentiality11

SECTION 3 – SETTLEMENT BENEFITS11

 3.1 Payment of Settlement Amount11

 3.2 Taxes and Interest12

SECTION 4 – NO REVERSION.....13

 4.1 No Reversion13

SECTION 5 – OPTING-OUT.....13

 5.1 Opt-Outs.....13

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT.....14

 6.1 Right of Termination.....14

 6.2 If Settlement Agreement is Terminated.....15

 6.3 Return of Settlement Amount Following Termination.....15

 6.4 Survival of Provisions After Termination.....15

SECTION 7 – RELEASES AND DISMISSALS.....16

 7.1 Release of Releasees16

 7.2 Covenant Not To Sue.....16

 7.3 No Further Claims.....16

 7.4 Dismissal of the Action.....17

 7.5 Releases a Material Term.....17

SECTION 8 – CLAIMS AGAINST OTHER ENTITIES.....17

 8.1 Claims Against Other Entities Reserved.....17

SECTION 9 – EFFECT OF SETTLEMENT.....17

 9.1 No Admission of Liability17

 9.2 Agreement Not Evidence.....18

 9.3 No Further Litigation18

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION18

10.1 Appointment of the Administrator.....18

10.2 Information and Assistance from the Defendant18

10.3 No Responsibility for Administration or Fees19

SECTION 11 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATION EXPENSES19

11.1 Class Counsel Fees, Class Counsel Disbursements and Administration Expenses
 19

SECTION 12 – FUNDING AND HONORARIUM20

12.1 Funding and Honorarium.....20

12.2 Release of the Funder’s Security21

SECTION 13 – SUBSEQUENT SETTLEMENTS OF OTHER 2018 ACTIONS.....21

13.1 Definitions.....21

13.2 Obligations in the Event of a Subsequent Settlement.....22

SECTION 14 – MISCELLANEOUS24

14.1 Motions for Directions.....24

14.2 Releasees Have No Liability for Administration.....24

14.3 Headings, etc.....24

14.4 Computation of Time.....24

14.5 Ongoing Jurisdiction.....25

14.6 Governing Law25

14.7 Entire Agreement.....25

14.8 Amendments25

14.9 Binding Effect.....26

14.10 Counterparts.....26

14.11 Negotiated Agreement26

14.12 Language.....26

14.13 Recitals.....27

14.14 Schedules27

14.15 Acknowledgements.....27

14.16 Authorized Signatures.....27

14.17 Notice.....28

14.18 Date of Execution28

RECITALS

- A. WHEREAS the Action was commenced by the original plaintiff, Gary Stenzler, in Ontario on April 6, 2018;
- B. WHEREAS the Plaintiff, Peter Westwood, was added as the plaintiff in the Action in substitution for Mr. Stenzler in accordance with the Order of the Honourable Justice Belobaba dated February 5, 2021;
- C. WHEREAS Class Members were provided an opportunity to opt out of the Action, the deadline for Class Members to opt out of the Action expired on April 8, 2022, and there were no opt-outs from the Action;
- D. WHEREAS the Action alleges, among other things, that the Defendant paid trailing commissions out of the assets of the TD Mutual Funds to Discount Brokers, and that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to Discount Brokers were excessive, inflated and/or unearned, and further that the Defendant made misrepresentations about the nature of the trailing commission payments;
- E. WHEREAS the Defendant has denied and continues to deny each and all of the claims and allegations of wrongdoing made by the Plaintiff in the Action, including any and all allegations that the Plaintiff and/or the Class Members have suffered any harm or damage whatsoever, and all claims and allegations of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action, or otherwise;
- F. WHEREAS the Plaintiff, Class Counsel and the Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Defendant;
- G. WHEREAS the Plaintiff and Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defences thereto, and the applicable law, that: (1) it is in the best interests of the Class to enter into this Settlement Agreement in order to avoid the

- 2 -

uncertainties of litigation and to ensure that the benefits reflected herein, including the amount to be paid by the Defendant under this Settlement Agreement, are obtained for the Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the Class;

H. WHEREAS the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Class in the Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

I. WHEREAS counsel for the Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

J. WHEREAS as a result of these settlement discussions and negotiations, the Defendant and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendant and the Plaintiff, both individually and on behalf of the Class, subject to approval of the Court;

K. WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class;

L. WHEREAS the Parties therefore wish to and hereby finally resolve, without admission of liability, the Action against the Defendant;

M. WHEREAS the Parties intend to provide a supplemental opt-out right to those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled and dismissed with prejudice,

- 3 -

all without costs as to the Plaintiff, the Class or the Defendant, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

(1) **2022 Actions** means, collectively, *Aggarwal v TD Asset Management Inc.*, Ontario Superior Court of Justice, Court File No. CV-22-691344-00CP, *Ciardullo v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-684723-00CP, *Ciardullo et al. v. 1832 Asset Management L.P. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-685386-00CP, *Yeats v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-22-690373-00CP, *Woodard v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-22-690374-00CP, *Yeats v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-22-690519-00CP, *DeJong v. RBC Global Asset Management Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-22-691343-00CP, and *Aizic v. Natcan Trust Company et al.*, Ontario Superior Court of Justice, Court File No. CV-23-00697428-00CP.

(2) **Action** means *Westwood v TD Asset Management Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-595380-00CP.

(3) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

(4) **Administrator** means the third party professional firm and any employees of such firm, selected at arm's-length by Class Counsel, and appointed by the Court to facilitate dissemination of notices, receive and review claims and administer the Settlement Amount in accordance with the Distribution Protocol, and report to the Parties and the Court on the administration of the Settlement.

(5) **Adverse Decision** has the meaning given to such term in Section 13.1(1)(a).

- 4 -

- (6) **Class** means all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to the Date of Execution, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.
- (7) **Class Counsel** means Siskinds LLP.
- (8) **Class Counsel Disbursements** means the disbursements, administration expenses, and applicable taxes incurred by Class Counsel and Bates Barristers P.C. in the prosecution of the Action, as well as any adverse costs awards issued against the Plaintiff in the Action.
- (9) **Class Counsel Fees** means the fees of Class Counsel and Bates Barristers P.C., and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Class Members to any other body or Person.
- (10) **Class Member** means a member of the Class.
- (11) **Court** means the Ontario Superior Court of Justice.
- (12) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.
- (13) **Defendant** means TD Asset Management Inc.
- (14) **Defendant Claims** means claims, including Unknown Claims, that any Releasee may have against a Releasor or Class Counsel relating to the institution, prosecution, or settlement of the Action.
- (15) **Discount Broker Actions** means, collectively, *Frayce et al. v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-638868-00CP, *Frayce v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-634551-00CP, and *Michaud et al. v BBS Securities Inc. et al.*, Supreme Court of British Columbia, Court File No. VLC-S-1912710.
- (16) **Discount Brokers** means entities providing “order-execution only services” as defined in Rule 3200 of the IIROC Dealer Member Rules or entities performing a function similar to “order-execution only services” prior to the introduction of that definition in Rule 3200 of the IIROC

- 5 -

Dealer Member Rules, including (without limitation) TD Direct Investing, a division of TD Waterhouse Canada Inc., a subsidiary of The Toronto-Dominion Bank, or such other discount brokerage business operated by The Toronto-Dominion Bank from time to time.

(17) ***Dismiss Order*** has the meaning given to such term in Section 2.3(1).

(18) ***Distribution Order*** has the meaning given to such term in Section 2.3(1).

(19) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Court.

(20) ***Effective Date*** means the date on which the Dismiss Order has become a Final Order.

(21) ***Excluded Persons*** means:

- (a) the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund;
- (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Belobaba dated December 14, 2021 providing for certification notice and an opt-out process; or
- (c) any Person who would otherwise be a Class Member and who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 but who validly excludes themselves from the Action in accordance with the First Order.

(22) ***Final Order*** means an order of the Court from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or a notice of appeal.

- 6 -

(23) **First Notice** means the short-form, long-form and internet banner notices of the pendency of the motion for the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule E**, **Schedule F** and **Schedule G** hereto or as fixed by the Court.

(24) **First Order** has the meaning given to such term in Section 2.2(1).

(25) **Funder** means Claims Funding International, PLC.

(26) **Funder's Security** means the amounts paid into Court by the Funder as security for its obligations pursuant to the Funding Order.

(27) **Funding Agreement** means the agreement entered into on March 29, 2019 between the original plaintiff in the Action, Gary Stenzler, and the Funder for the provision of, among other things, an indemnity against adverse costs in exchange for the payment of the Funding Commission and subsequently approved by the Court pursuant to the Funding Order.

(28) **Funding Commission** means the amount to be paid to the Funder pursuant to the Funding Agreement.

(29) **Funding Order** means the Order of the Honourable Justice Belobaba dated June 20, 2019 approving the Funding Agreement.

(30) **Implementation Date** means the date on which both the Dismiss Order and the Distribution Order have become Final Orders.

(31) **Material Adverse Litigation Event** has the meaning given to such term in Section 13.1(1)(a).

(32) **Other 2018 Actions** means, collectively, *Sage v. 1832 Asset Management L.P.*, Ontario Superior Court of Justice, Court File No. CV-18-600380-00CP, *Gilani v. BMO Investments Inc.*, Ontario Superior Court of Justice, Court File No. CV-18-611748-00CP, *Pozgaj v. Canadian Imperial Bank of Commerce et al.*, Ontario Superior Court of Justice, Court File No. CV-18-605345-00CP, *Pozgaj v. Mackenzie Financial Corporation et al.*, Ontario Superior Court of Justice, Court File No. CV-18-610311-00CP, *Pozgaj v. National Bank Investments Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-18-611745-00CP, and *Ross v. RBC Global*

- 7 -

Asset Management Inc. et al., Ontario Superior Court of Justice, Court File No. CV-18-611743-00CP.

(33) **Net Settlement Amount** means the amount available in the Trust Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, the Funding Commission and any other amounts approved by the Court.

(34) **Parties** means the Defendant, the Plaintiff and, where necessary, the Class Members.

(35) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(36) **Plaintiff** means Peter Westwood.

(37) **Plan of Notice** means the plan for disseminating the First Notice and the Second Notice to the Class substantially in the form attached as **Schedule D** hereto or as fixed by the Court.

(38) **Released Claims** mean any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, lawyers' fees, disgorgement, restitution and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several, and solidarily in the Province of Quebec), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Action, or any amended complaint or pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to any concerns relating to trailing commissions paid by the Defendant to Discount Brokers in respect of the TD Mutual Funds.

- 8 -

(39) **Releasees** means, jointly and severally, individually and collectively, the Defendant and each of its past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing; but excluding TD Waterhouse Canada Inc.

(40) **Releasers** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers, assigns, beneficiaries, trustees, agents and legal or other representatives.

(41) **Second Notice** means the short-form, long-form and internet banner notices of the Dismiss Order and the Distribution Order substantially in the forms attached as **Schedule H, Schedule I** and **Schedule J** hereto or as fixed by the Court.

(42) **Settlement** means the settlement of the Action on the terms provided in this Settlement Agreement.

(43) **Settlement Agreement** means this agreement, including the recitals and schedules.

(44) **Settlement Amount** means seventy million two hundred and fifty thousand Canadian dollars (C\$70,250,000).

(45) **Subsequent Settlement** has the meaning given to such term in Section 13.1(1)(b).

(46) **Subsequent Settlement Amount** has the meaning given to such term in Section 13.1(1)(c).

(47) **TD Mutual Funds** means all mutual fund trusts (including, without limitation, all series of units thereof) of which the Defendant is trustee or was trustee at any time on or prior to the Date of Execution (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated,

- 9 -

(ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

(48) **Termination Notice** has the meaning given to such term in Section 6.1(1).

(49) **Trust Account** means a guaranteed investment product, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Class Counsel or the Administrator, once appointed, for the benefit of the Class Members, as provided for in this Settlement Agreement.

(50) **Unknown Claims** means any and all Released Claims against the Releasees which Releasors do not know or suspect to exist in his, her, or its favour as of the Effective Date, and any Defendant Claims against Releasors which Releasees do not know or suspect to exist in his, her, or its favour as of the Effective Date, which if known by the Releasors or Releasees might have affected his, her, or its decision(s) with respect to the settlement. The Releasors and Releasees may hereafter discover facts other than or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Defendant Claims. Nevertheless, the Plaintiff and the Releasees shall expressly, fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Dismiss Order (when it becomes a Final Order) shall have, fully, finally, and forever settled and released, any and all Released Claims and Defendant Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiff and the Releasees acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims and Defendant Claims was separately bargained for and was a key element of the Settlement Agreement.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.

- 10 -

SECTION 2 – APPROVAL AND NOTICE PROCESS

2.1 Commercially Reasonable Efforts

(1) The Parties shall use their commercially reasonable efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Action.

2.2 Motion for First Order

(1) The Plaintiff shall file a motion before the Court, as soon as practicable after the Date of Execution, for an order substantially in the form attached as **Schedule A (“First Order”)**.

(2) The Defendant will consent to the issuance of the First Order.

(3) As soon as practicable following entry of the First Order, Class Counsel shall cause the First Notice to be published and distributed in accordance with the Plan of Notice and the direction of the Court. The costs of publishing and distributing the First Notice shall be paid from the Trust Account as and when incurred.

2.3 Motion for Dismiss Order and Distribution Order

(1) The Plaintiff shall file a motion before the Court for orders substantially in the form attached as **Schedule B (“Dismiss Order”)** and **Schedule C (“Distribution Order”)** as soon as practicable after:

- (a) the First Order has been granted; and
- (b) the notices described in Section 2.2(3) have been published.

(2) The Defendant will consent to the issuance of the Dismiss Order. The Defendant will not oppose the issuance of the Distribution Order.

(3) At the motion for the Dismiss Order and the Distribution Order, Class Counsel shall propose for approval by the Court the Distribution Protocol or such other plan for distributing the Net Settlement Amount to the Class as Class Counsel may advise. The Distribution Protocol is the responsibility of Class Counsel and the Defendant has no involvement in its design. Accordingly, the approval of the Distribution Protocol shall be considered separately from the approval of the

- 11 -

Settlement and is not a condition of the approval of the Settlement itself and the dismissal of the Action as against the Defendant without costs and with prejudice in accordance with the Dismiss Order.

(4) The Defendant will take no position or make any submission to the Court concerning the Distribution Protocol, except as requested or required by the Court.

(5) The Plaintiff may make any amendments to the Distribution Protocol, the Distribution Order, the Second Notice or the Plan of Notice as it relates to the Second Notice requested or directed by the Court.

(6) As soon as practicable following the Implementation Date, Class Counsel and the Administrator shall cause the Second Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court. The costs of publishing the Second Notice shall be paid from the Trust Account as and when incurred.

2.4 Pre-Motion Confidentiality

(1) Until the motion required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), pursuant to regulatory requirements as necessary to give effect to its terms, or as otherwise required by law.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) The Defendant shall pay the Settlement Amount to Class Counsel by November 8, 2024 for deposit into the Trust Account.

(2) Payment of the amount specified in Section 3.1(1) shall be made by wire transfer. At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank,

- 12 -

ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest, taxes and costs.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Action, including, but not limited to, legal fees, judicial costs, taxes or costs of notice.

(6) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.

(7) Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

(8) Within thirty (30) days of the Effective Date, Class Counsel shall transfer control of the Trust Account to the Administrator, but before doing so Class Counsel may deduct and retain from the monies in the Trust Account the Class Counsel Fees and the Class Counsel Disbursements approved by the Court.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Class. The Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including

- 13 -

any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Administrator.

SECTION 4 – NO REVERSION

4.1 No Reversion

(1) Unless this Settlement Agreement is terminated as provided herein, the Defendant shall not be entitled to the repayment from the Plaintiff of any portion of the Settlement Amount or any interest earned on the Settlement Amount in the Trust Account. In the event this Settlement Agreement is terminated, the Defendant shall be entitled to the repayment only to the extent of and in accordance with Section 6.3(1).

SECTION 5 – OPTING-OUT

5.1 Opt-Outs

(2) An opt-out right was provided by the Order of the Honourable Justice Belobaba dated December 14, 2021. The opt-out deadline expired on April 8, 2022 pursuant to that Order. The Parties acknowledge and confirm that RicePoint Administration Inc., the notice and opt-out administrator appointed by the Court pursuant to the Order of the Honourable Justice Belobaba dated December 14, 2021, confirmed that no Person opted out of the Action.

(3) A supplemental opt-out right will be provided to those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022, as set out in the First Order.

(4) The Plaintiff, through Class Counsel, expressly waived his right to opt out of the Action.

- 14 -

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

(1) The Plaintiff and the Defendant shall, in their respective discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so (“**Termination Notice**”) to the other Party hereto within thirty (30) days of the date on which:

- (a) the Court declines to dismiss the Action against the Defendant;
- (b) the Court declines to approve this Settlement Agreement or any material part hereof;
- (c) the Court approves this Settlement Agreement in a materially modified form;
- (d) the Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as **Schedule B**, and such order becomes a Final Order; or
- (e) the Dismiss Order is reversed on appeal and the reversal becomes a Final Order.

(2) Except as provided for in Section 6.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by the Court with respect to the Distribution Order, Class Counsel Fees or Class Counsel Disbursements, or the Distribution Protocol, shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

- 15 -

6.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to approve this Settlement Agreement, which has not been decided, shall proceed; and
- (b) any order approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise.

6.3 Return of Settlement Amount Following Termination

(1) If the Settlement Agreement is terminated, Class Counsel, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, shall return to the Defendant the amount the Defendant has paid to Class Counsel, plus all accrued interest thereon and less any costs incurred with respect to the notices required by Section 2.2(3), and any costs of translation required by Section 14.12, such costs in total not to exceed one hundred and fifty thousand Canadian dollars (CAD \$150,000).

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(2), 3.2(3), 6.1, 6.2, 6.3, 6.4, 9.1 and 9.2 (the “**Surviving Provisions**”), and the recitals, definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The recitals, definitions and Schedules shall survive only for the limited purpose of the interpretation of the Surviving Provisions within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

(1) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against the Defendant; and (ii) any and all Released Claims as against all Releasees.

(2) Upon the Effective Date, subject to Section 7.2, each of the Releasers: (i) shall be deemed to have, and by operation of the Dismiss Order, shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have against the Releasees, regardless of whether such Releaser executes and delivers a proof of claim and release form; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Releasees; and (iii) agrees and covenants not to sue any of the Releasees on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Releasee related in any way to any Released Claims.

7.2 Covenant Not To Sue

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

(1) Upon the Effective Date, the Releasers shall not then or thereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this Section 7.3(1) does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions. For greater certainty and without limiting the generality of the foregoing,

- 17 -

the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

7.4 Dismissal of the Action

(1) Upon the Effective Date, the Action shall be dismissed with prejudice and without costs as against the Defendant.

7.5 Releases a Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8 – CLAIMS AGAINST OTHER ENTITIES

8.1 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any Person other than the Releasees.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

(1) The Plaintiff and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees or any one of them, or of the truth of any of the claims or allegations contained in the Action, or any other pleading filed by the Plaintiff.

9.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

9.3 No Further Litigation

(1) Neither Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court. For the avoidance of doubt, this Section 9.3(1) does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Appointment of the Administrator

(1) By order of the Court, the Administrator will be appointed to serve until such time as the Net Settlement Amount is distributed in accordance with this Settlement Agreement and the Distribution Protocol, on the terms and conditions and with the powers, rights, duties and responsibilities set out in this Settlement Agreement and in the Distribution Protocol.

10.2 Information and Assistance from the Defendant

(1) By order of the Court in the Distribution Order, the Defendant will deliver, or will cause to be delivered, to Class Counsel an electronic copy of the account-level or customer-level data

- 19 -

that the Defendant prepared for the purposes of mediation in the Action, along with the name, email address and mailing address corresponding to each account or customer identified in that data. Class Counsel shall provide this data to the Administrator upon its appointment by the Court to be used only for the purpose of Section 10.2(2).

(2) Class Counsel and the Administrator may use the information obtained under Section 10.2(1) for the purpose of administering and implementing this Settlement Agreement, the Plan of Notice and the Distribution Protocol, but Class Counsel and the Administrator shall otherwise keep confidential the information obtained under Section 10.2(1).

(3) For greater certainty, any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Settlement Agreement and the Distribution Protocol.

10.3 No Responsibility for Administration or Fees

(1) The Defendant shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account, including, but not limited to, Administration Expenses, Class Counsel Fees and Class Counsel Expenses.

SECTION 11 – CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATION EXPENSES

11.1 Class Counsel Fees, Class Counsel Disbursements and Administration Expenses

(1) The Defendant shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiff's or Class Members' respective lawyers, experts, advisors, agents, or representatives.

(2) Class Counsel shall pay the costs of the notices required by Sections 2.2(3) and 2.3(6) and any costs of translation required by Section 14.12 from the Trust Account, as they become due. The Releasees shall not have any responsibility for the costs of the notices or translation.

- 20 -

(3) Class Counsel may seek the Court's approval to pay Class Counsel Fees and Class Counsel Disbursements contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Fees and Class Counsel Disbursements shall be reimbursed and paid solely out of the Trust Account after the Effective Date. No Class Counsel Fees or Class Counsel Disbursements shall be paid from the Trust Account prior to the Effective Date.

(4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(5) The Defendant shall not be liable for any fees, disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members, or any lien of any Person on any payment to any Class Member from the Settlement Amount.

SECTION 12 – FUNDING AND HONORARIUM

12.1 Funding and Honorarium

(1) Immediately following the motion for the Dismiss Order and the Distribution Order, Class Counsel may seek orders from the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.

(2) Class Counsel are not precluded from making additional motions to the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiff.

(3) The Defendant acknowledges that it is not party to any motion concerning the payment of the Funding Commission or the payment of an honorarium to the Plaintiff, it will have no involvement in any such motion, and it will not take any position or make any submissions to the Court concerning any such motion, except as requested and required by the Court.

(4) Any order or proceeding relating to payment of the Funding Commission or the payment of an honorarium to the Plaintiff, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or affect or delay the Effective Date and the settlement of this Action provided herein.

12.2 Release of the Funder's Security

- (1) After the Effective Date, the Parties shall cooperate in taking all reasonably required steps to secure the prompt payment out of Court to the Funder of the Funder's Security.

SECTION 13 – SUBSEQUENT SETTLEMENTS OF OTHER 2018 ACTIONS

13.1 Definitions

- (1) For the purposes of sections 13.1 and 13.2 hereof:
 - (a) “**Material Adverse Litigation Event**” means an event that has a material adverse effect on the quantum of potential recovery and/or overall likelihood of success against the defendant(s) in the Other 2018 Action in which there is a Subsequent Settlement and meets the following criteria. This event would only occur if there is a decision of a Court in any of the Other 2018 Actions (“**Adverse Decision**”) or a change in the financial circumstances of the defendant(s) in the applicable Other 2018 Action that would cause Class Counsel, acting reasonably and in good faith, to materially alter its assessment of its client's position in settlement negotiations with the defendant(s) and (a) has a material adverse effect upon the quantum of potential recovery and/or overall likelihood of success and/or enforcement against the defendant(s), or (b) has the effect of materially decreasing the valuation of the applicable Other 2018 Action. An “Adverse Decision” might include, but is not limited to, a judgment dismissing a motion for certification in the applicable Other 2018 Action, a judgment that materially reduces the size of the class relative to the class proposed in the applicable Other 2018 Action, a judgment that materially reduces the class period relative to the proposed class period in the applicable Other 2018 Action, and a judgment dismissing (in whole or in part) the applicable Other 2018 Action.
 - (b) “**Subsequent Settlement**” means any settlement of any of the Other 2018 Actions;
and
 - (c) “**Subsequent Settlement Amount**” means the amount that the defendant(s) in any of the Other 2018 Actions agrees to pay pursuant to a Subsequent Settlement.

- 22 -

13.2 Obligations in the Event of a Subsequent Settlement

(1) Class Counsel acknowledges its professional obligations and that it intends to maximize the recovery of damages alleged in the Other 2018 Actions. As such, Class Counsel will endeavour to, acting reasonably and in good faith, negotiate terms in any Subsequent Settlement that are at least as favourable to the class members in the Other 2018 Actions than the settlement in this Settlement Agreement.

(2) As soon as and in the event that such disclosure is permitted pursuant to the terms of a Subsequent Settlement, Class Counsel shall advise the Defendant in writing of the Subsequent Settlement and the Subsequent Settlement Amount. Class Counsel shall also advise the Defendant in writing whether in Class Counsel's opinion, acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the Other 2018 Action than the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the following factors:

- (a) the Subsequent Settlement Amount, compared to the Settlement Amount under this Settlement Agreement;
- (b) the percentage equal to the Subsequent Settlement Amount as a percentage of Class Counsel's estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the defendant(s) in the applicable Other 2018 Action, compared to the percentage equal to the Settlement Amount as a percentage of Class Counsel's estimate, acting reasonably and in good faith, of the amount of the trailing commissions paid to Discount Brokers by the Defendant;
- (c) differences in the facts of the applicable Other 2018 Action and this Action that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action;
- (d) whether in Class Counsel's opinion, acting reasonably and in good faith, a Material Adverse Litigation Event has occurred; and

- 23 -

- (e) any other factor that in Class Counsel's opinion, acting reasonably and in good faith, affected the quantum of potential recovery or overall likelihood of success of the claims of the class members in the applicable Other 2018 Action, compared to the quantum of potential recovery or overall likelihood of success of the claims of the Class Members in this Action.
- (3) The Defendant acknowledges and understands that the quantification of the trailing commissions paid to Discount Brokers by the Defendant or the defendant(s) in the applicable Other 2018 Action under Section 13.2(2)(b) may not be able to be precisely and accurately determined because of, among other things, incomplete or insufficient data. In such circumstances, Class Counsel's estimate, acting reasonably, in good faith and relying on expert evidence, of the amount of the trailing commissions paid to Discount Brokers shall be accepted by the Defendant as a reasonable estimation of the trailing commissions for the purposes of sections 13.1 and 13.2.
- (4) In advising the Defendant under Section 13.2(2), Class Counsel, acting reasonably and in good faith, shall provide the Defendant with a written summary of the factors considered by Class Counsel under Sections 13.2(2)(a) to 13.2(2)(e), subject to any legal privilege owed to its client(s) in the applicable Other 2018 Action or confidentiality obligations to the defendant(s) in the applicable Other 2018 Action.
- (5) On the motion for Court approval of a Subsequent Settlement, Class Counsel shall include in the evidence filed in support of the motion a statement as to whether in Class Counsel's opinion, acting reasonably and in good faith, the Subsequent Settlement is at least as favourable to the class members in the applicable Other 2018 Action than the settlement set forth in this Settlement Agreement is to the Class Members, having regard to the factors set out in Sections 13.2(2)(a) to 13.2(2)(e).
- (6) None of the provisions of this Section 13 shall be interpreted to impose any obligation on Class Counsel to (i) disclose any information which it would not otherwise be legally permitted to disclose in the course of seeking approval of a Subsequent Settlement, (ii) waive any settlement, litigation, solicitor-client or other privilege absent the requisite permission or instructions to do so, or (iii) do anything in the Other 2018 Actions other than comply with its professional obligations and seek to maximize the recovery of damages alleged in those proceedings.

- 24 -

(7) Other than what is expressly provided in this section, this section and this Settlement Agreement confer no rights of standing to the Defendant in respect of the Other 2018 Actions.

SECTION 14 – MISCELLANEOUS

14.1 Motions for Directions

(1) Class Counsel or the Defendant may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

14.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

14.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

14.4 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and

- 25 -

including the day on which the second event happens, including all calendar days;
and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

(1) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, the Parties and the Class Members to interpret and enforce the terms, conditions and obligations under this Settlement Agreement, the First Order, the Dismiss Order and the Distribution Order.

14.6 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

14.7 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

14.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all of the Parties, and any such modification or amendment must be approved by the Court.

14.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendant, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made by the Defendant shall be binding upon all of the Releasees.

14.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

14.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

14.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais*. Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

14.13 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

14.14 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

14.15 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

14.16 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

- 28 -

14.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

Anthony O'Brien
Siskinds LLP
65 Queen Street West, Suite 1155
Toronto, ON M5H 2M5
Tel: 416-594-4394
Fax: 519-672-6065
Email: anthony.obrien@siskinds.com

For the Defendant:

Shane D'Souza
McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Tel: 416-601-8196
Fax: 416-868-0673
Email: sdsouza@mccarthy.ca

14.18 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

PETER WESTWOOD on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:

Siskinds LLP

TD ASSET MANAGEMENT INC.:

Name of Authorized Signatory:

Tim WIGGAN

Signature of Authorized Signatory:


Tim Wiggan, TD Bank Group

PETER WESTWOOD on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory: Anthony O'Brien

Signature of Authorized Signatory:  Signed by:
Anthony O'Brien
866D01A5EEE14CD
Siskinds LLP

TD ASSET MANAGEMENT INC.:

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Tim Wiggan, TD Bank Group

SCHEDULE A
FIRST ORDER

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, amending the class definition in the Action, approving the notices of settlement approval hearing and the method of dissemination of the notices, and setting a supplemental opt-out process and deadline, was heard on *[insert]* at *[insert]*.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated *[insert]* attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the Defendant consents to this Order;

- 3 -

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the class definition set out in paragraph 3 of the certification Order of the Honourable Justice Belobaba dated February 27, 2020 is amended, for settlement purposes, to the following (“**Class**” or “**Class Member**”):

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.

“Excluded Persons” means: (a) the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Belobaba dated December 14, 2021 providing for certification notice and an opt-out process; or (c) any Person who would otherwise be a Class Member and who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 but who validly excludes themselves from the Action in accordance with this Order.

5. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval hearing (“**First Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.

- 4 -

6. **THIS COURT ORDERS** that the plan of dissemination for the First Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the First Notice shall be disseminated in accordance with the Plan of Notice.
7. **THIS COURT ORDERS** that those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (“**Eligible Supplemental Opt-Out Party**” or “**Eligible Supplemental Opt-Out Parties**”) may opt out of this action in accordance with this Order.
8. **THIS COURT ORDERS** that the supplemental opt-out form (“**Supplemental Opt-Out Form**”), substantially in the form attached as Appendix “A” to the long-form First Notice, is hereby approved.
9. **THIS COURT ORDERS** that the deadline for Eligible Supplemental Opt-Out Parties to opt out of the action (“**Supplemental Opt-Out Deadline**”) is the date that is sixty (60) days after the day on which the First Notice is first published.
10. **THIS COURT ORDERS** that any Eligible Supplemental Opt-Out Party who opts out of this class proceeding by the Supplemental Opt-Out Deadline, by complying with the instructions set out in the long-form First Notice and fully completing a Supplemental Opt-Out Form, shall not be a Class Member on and after the date that such person opts out of the class proceeding.
11. **THIS COURT ORDERS** that, subject only to the opt-out right provided to Eligible Supplemental Opt-Out Parties in accordance with paragraphs 7 to 10 of this Order, the period for Class Members to opt out of this action expired as of April 8, 2022.
12. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection to, or comment on, the settlement, the Distribution Protocol or the request for approval of

- 5 -

Class Counsel Fees and Class Counsel Disbursements shall deliver a written statement to Class Counsel, at the address indicated in the First Notice, no later than 21 calendar days prior to the hearing of the settlement approval motion.

The Honourable Justice Akbarali

SCHEDULE B
DISMISS ORDER

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the settlement between the Plaintiff and the Defendant and dismissing this action as against the Defendant, was heard on [insert] at [insert].

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated [insert] attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been [insert] written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Defendant consents to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
5. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
6. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
7. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 8, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

9. **THIS COURT ORDERS** that, upon the Effective Date, each Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors, covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
10. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For the avoidance of doubt, this does not apply to the Other 2018 Actions, the 2022 Actions, or the Discount Broker Actions.
11. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
12. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement or with respect to the Distribution Protocol, including administration, investment, or distribution of the Trust Account.

13. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed as against the Defendant, without costs and with prejudice.

The Honourable Justice Akbarali

SCHEDULE C
DISTRIBUTION ORDER

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the _____ day
)
JUSTICE JASMINE T. AKBARALI) of _____, _____

BETWEEN:

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order, among other things, approving the notices of settlement approval and the method of dissemination of the notices, approving the Distribution Protocol, and approving the claims process, was heard on *[insert]* at *[insert]*.

ON READING the materials filed, including the settlement agreement between the Plaintiff and the Defendant dated *[insert]* attached to this Order as **Schedule 1** (“**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Distribution Protocol has passed and there have been *[insert]* written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Defendant does not oppose this Order;

AND ON BEING ADVISED that [*insert*] consents to being appointed as the Administrator;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
4. **THIS COURT ORDERS** that the short-form, long-form and internet banner notices of settlement approval (“**Second Notice**”) are hereby approved substantially in the forms attached hereto respectively as **Schedule 2**, **Schedule 3** and **Schedule 4**.
5. **THIS COURT ORDERS** that the plan of dissemination for the Second Notice (“**Plan of Notice**”) is hereby approved in the form attached hereto as **Schedule 5**, and that the Second Notice shall be disseminated in accordance with the Plan of Notice.
6. **THIS COURT ORDERS** that the Distribution Protocol, substantially in the form attached hereto as **Schedule 6**, is approved for the purposes of distributing the Net Settlement Amount.
7. **THIS COURT ORDERS** that the form and content of the claim form (“**Claim Form**”), substantially in the form attached hereto as **Schedule 7**, is approved.
8. **THIS COURT ORDERS** that [*insert*] is appointed as the Administrator.

9. **THIS COURT ORDERS** that to be entitled to participate in a distribution from the Net Settlement Amount, a Class Member must:
- (a) submit a properly completed Claim Form to the Administrator, using the online claim portal established by the Administrator or by submitting a paper Claim Form by mail or courier to the Administrator, postmarked or received by the Administrator on or before 11:59pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which any part of Part 2 of the Plan of Notice is first completed (“**Claims Bar Deadline**”);
 - (b) submit, together with the Claim Form, any supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Administrator; and
 - (c) otherwise comply with the instructions set out in the Claim Form.
10. **THIS COURT ORDERS** that the Defendant shall forthwith deliver, or cause to be delivered, to Class Counsel the data required under section 10.2(1) of the Settlement Agreement.

The Honourable Justice Akbarali

SCHEDULE D
PLAN OF NOTICE

PLAN OF NOTICE

Unless otherwise modified herein, the definitions set out in the Settlement Agreement dated August [insert], 2024 apply.

Part 1: First Notice will be disseminated (or caused to be disseminated) by Class Counsel as follows:

1. Short-form notice (substantially in the form attached as **Schedule E** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule F** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule G** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, no less than 30 days and no more than 35 days; and

- (b) published as a 12-day sponsored news link on Stockhouse.

Part 2: Second Notice will be disseminated by Class Counsel and the Administrator as follows:

1. Short-form notice (substantially in the form attached as **Schedule H** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (c) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (d) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (e) published once in the business section of *La Presse*, in French;
 - (f) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members and post the notice on their news boards directed to the attention of their clients who may be Class Members; and
 - (g) filed by the Defendant as a news release on SEDAR.
2. Long-form notice (substantially in the form attached as **Schedule I** to the Settlement Agreement):
 - (a) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and
 - (b) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French).
3. Internet banner (substantially in the form attached as **Schedule J** to the Settlement Agreement):
 - (a) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days; and
 - (b) published as a 12-day sponsored news link on Stockhouse.

SCHEDULE E
SHORT-FORM FIRST NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Proposed Settlement and Supplemental Opt-Out Deadline for Certain Class Members

Have you held units of a TD mutual fund through a discount broker?

A class action settlement has been reached with TD Asset Management Inc. for C\$70.25 million to resolve the claims asserted on behalf of all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD mutual fund trust through a discount broker (“Class”).

The settlement is subject to approval by the Ontario Superior Court of Justice. A settlement approval hearing has been set for *[insert]*. At that same hearing, the Court will also consider a motion to approve Class Counsel’s fees, which will not exceed *[insert]*, plus reimbursement for expenses incurred by Class Counsel in the litigation, plus taxes on the fees and disbursements.

If you wish to object to the settlement, Class Counsel’s fees and disbursements, or the Distribution Protocol that sets out the manner in which the net settlement funds will be distributed among eligible Class Members, you must do so by *[insert]*.

If you are a Class Member who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (meaning you never held units of a TD Mutual Fund through a Discount Broker on or before April 9, 2022), and you do not want to be part of the class action and be bound by the terms of the settlement, you must opt out by submitting a supplemental opt-out form by *[insert opt-out deadline]*.

For other Class Members (meaning you held units of a TD Mutual Fund through a Discount Broker on or before April 8, 2022, regardless of whether you continued to hold those units after April 8, 2022), your opt-out period expired on April 8, 2022 and there is no further right to opt out of the class action.

For important information regarding the class action, to determine if you are a member of the Class, to obtain a copy of the supplemental opt-out form, to object, and to understand your legal rights:

- View the long-form notice at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>
- Call Class Counsel at *[insert]* or toll-free *[insert]*

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a

discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit [*insert relevant website*] for more information about that settlement.

The publication of this notice was authorized by the Superior Court of Justice of the Province of Ontario

SCHEDULE F
LONG-FORM FIRST NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Proposed Settlement and Supplemental Opt-Out Deadline

Read this notice carefully as it may affect your legal rights

THIS NOTICE IS TO:

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a discount broker, except for the Excluded Persons (“**Class**” and “**Class Members**”).

In the above class definition:

“**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“**Defendant**”) is trustee or was trustee at any time on or prior to *[insert Date of Execution]* (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

“**Excluded Persons**” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who validly opted or opts out of the class action.

Examples of discount brokers are BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, TD Direct Investing, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

A settlement (“**Settlement**”) has been reached in the class action in the Ontario Superior Court of Justice against the Defendant (“**Action**”). This notice contains important details about the Settlement.

IMPORTANT DEADLINES

Objection Deadline (to object to the Settlement, Class Counsel’s fee request or the Distribution Protocol): *[insert]*

Supplemental Opt-Out Deadline (for those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 to exclude themselves from the Action and the settlement): *[insert]*

IMPORTANT NOTE ABOUT SEPARATE SETTLEMENT FOR NON-DISCOUNT BROKER HOLDERS OF TD MUTUAL FUNDS

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to discount brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to discount brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments.

The Defendant has denied these allegations and continues to deny all allegations.

On behalf of the Class, the Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

THE CERTIFICATION ORDER

By Orders dated February 27, 2020 and February 5, 2021, the Ontario Superior Court of Justice (“**Court**”) certified the Action as a class proceeding under the Ontario *Class Proceedings Act, 1992*. The Court appointed the plaintiff, Peter Westwood, as the representative plaintiff for the Class (“**Plaintiff**”).

By Order dated [insert], the class definition was amended to the definition noted above.

THE SETTLEMENT

On [insert], the Plaintiff and the Defendant executed a Settlement Agreement (“**Settlement Agreement**”), which is subject to approval by the Court. The Settlement Agreement provides for the payment of C\$70,250,000 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members.

The Settlement Agreement provides that if approved by the Court, the claims of Class Members asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed.

The Settlement Agreement is not an admission of liability, wrongdoing, or fault on the part of the Defendant, which has denied, and continues to deny, the allegations against it.

SETTLEMENT APPROVAL HEARING

The Settlement Agreement is conditional on approval by the Court. The Settlement Agreement will be approved if the Court determines that it is fair and reasonable and in the best interests of the Class Members to approve it.

The Court will hear a motion for approval of the Settlement on [insert] at [insert].

CLASS COUNSEL’S FEES AND OTHER EXPENSES

The Plaintiff and the Class are represented by Siskinds LLP (“**Class Counsel**”). Class Counsel are conducting the Action on a contingent fee basis. On [insert], Class Counsel will make a motion to the Court for approval of their fees and the fees of Bates Barristers P.C., which in the aggregate will not exceed [insert], plus reimbursement for expenses incurred in the litigation in the maximum amount of [insert], plus applicable taxes on the fees and expenses.

A funding agreement between the Plaintiff and Claims Funding International, PLC ("**Funder**") was previously approved by the Court on June 20, 2019. Amounts owing to the Funder will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

On *[insert]*, Class Counsel will also seek the Court's approval for the payment of an honorarium to the Plaintiff in the maximum amount of *[insert]*. Class Counsel will be requesting that the honorarium be deducted directly from the Settlement Amount.

The fees of the claims administrator, together with any other costs relating to approval, notification, implementation and administration of the Settlement ("**Administration Expenses**"), will also be paid from the Settlement Amount.

CLASS MEMBERS' ENTITLEMENT TO COMPENSATION

If the Settlement Agreement is approved by the Court, the Settlement Amount, after deduction of Class Counsel's fees and expenses, amounts payable to the Funder, any approved honorarium for the Plaintiff and Administration Expenses ("**Net Settlement Amount**") will be distributed to Class Members who file valid and timely claims in accordance with the Distribution Protocol.

On *[insert]*, the Plaintiff will seek the Court's approval of the Distribution Protocol and a process by which Class Members can claim compensation from the Net Settlement Amount.

The proposed Distribution Protocol will provide that in order to determine the individual entitlements of Class Members who make claims, the losses of each claimant will be calculated in accordance with the Distribution Protocol. Once the notional losses of all Class Members who have filed valid claims have been calculated, the Net Settlement Amount will be allocated to those Class Members in proportion to their percentage of the total notional losses calculated for all valid claims filed. Because the Net Settlement Amount will be distributed *pro rata*, it is not possible to estimate the individual recovery of any individual Class Member until all the claims have been received and reviewed.

The approval of the Settlement Agreement is not contingent on the approval of the Distribution Protocol. The Court may still approve the Settlement Agreement even if it does not approve the Distribution Protocol or approves amendments to the Distribution Protocol.

PARTICIPATION IN THE APPROVAL MOTION

The following material will be posted on Class Counsel's website dedicated to the Action (<https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>) on or before the dates set out below:

1. the Settlement Agreement (posted prior to or at the time of the publication of this notice);
2. the proposed Distribution Protocol (posted by *[6 weeks prior to settlement approval hearing]*); and
3. a summary of the basis upon which Class Counsel recommends the Settlement and Distribution Protocol (posted by *[6 weeks prior to settlement approval hearing]*).

Class Members who wish to comment on, or make an objection to, the approval of the Settlement Agreement, the Distribution Protocol or the fees and disbursements of Class Counsel shall deliver (by email, mail or courier) a written submission to Class Counsel, to be postmarked or received no later than *[insert]*, at the following email address or mailing address:

Zohra Bhimani
Siskinds LLP
275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
Tel: 226-330-0409
Email: zohra.bhimani@siskinds.com

Any objections delivered by that date will be filed with the Court.

Class Members may attend at the hearing whether or not they deliver an objection. Class Members who wish to have a lawyer speak on their behalf at the hearing may retain one to do so at their own expense.

SUPPLEMENTAL OPT-OUT RIGHT FOR CERTAIN CLASS MEMBERS

If you are a Class Member who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (meaning you never held units of a TD Mutual Fund through a Discount Broker on or before April 9, 2022), and you do not want to be bound by the outcome of the Action, including the terms of the Settlement if approved, you must “opt out”, meaning that you must exclude yourself from the Action in accordance with the following procedure.

Such class Members who do not opt out will (i) be entitled to participate in the Settlement; (ii) be bound by the terms of the Settlement; and (iii) not be permitted to bring other legal proceedings in relation to the matters alleged in the Action against the Defendant, or any person released by the approved Settlement. Conversely, if you opt out of the Action, you will not be able to make a claim to receive compensation from the Settlement Amount but will maintain the right to pursue your own claim against the Defendant relating to the matters alleged in the Action.

If you wish to opt out of the Action, you must complete, sign and return (by email, mail or courier) the supplemental opt-out form provided at Appendix “A” hereto to Class Counsel.

In order for your opt-out to be valid, your complete and signed supplemental opt-out form must be postmarked or received by Class Counsel by no later than **[insert]**.

For other Class Members (meaning you held units of a TD Mutual Fund through a Discount Broker on or before April 8, 2022, regardless of whether you continued to hold those units after April 8, 2022), your opt-out period expired on April 8, 2022 and there is no further right to opt out of the Action.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information in both languages are available on Class Counsel’s website at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>.

Questions relating to the Action may be directed to Class Counsel using the contact details above.

Si vous avez besoin d’aide en français, veuillez contacter les avocats du groupe en utilisant les coordonnées ci-dessus et nous dirigerons votre demande vers une personne appropriée.

The publication of this notice was authorized by the Ontario Superior Court of Justice

(PLEASE CIRCLE THE APPROPRIATE LANGUAGE)

I believe that **I am / the organization that I represent is** a member of the Class in the Action.

I believe that **I am not / the organization that I represent is not** amongst the persons and entities excluded from the Action.

I understand that by opting out of the Action, **I will not be eligible / the organization that I represent will not be eligible** for any benefit that may be available to the Class upon resolution of this matter, if and when such resolution may occur.

I, _____ (print your full name), **OPT OUT FROM THE ACTION** and wish to be excluded from this class action.

I wish to opt out from this class action for the following reason(s) (*optional*):

I, _____ (print your full name), **CERTIFY** that the information provided herein is complete and true.

Date

Signature

In order to validly opt out, you must complete and send this Supplemental Opt-Out Form by no later than [DATE] to:

Zohra Bhimani
Siskinds LLP
275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
Email: zohra.bhimani@siskinds.com

SCHEDULE G
INTERNET BANNER FIRST NOTICE

DRAFT TEXT (subject to design)

Have you held units of a TD mutual fund
through a discount broker?

You may be affected by a proposed class
action settlement.

Click to learn your legal rights.

[*Link to <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>*]

SCHEDULE H
SHORT-FORM SECOND NOTICE

DRAFT TEXT (subject to design)

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Have you held units of a TD mutual fund through a discount broker?

The Ontario Superior Court of Justice approved a class action settlement with TD Asset Management Inc. for C\$70.25 million to resolve the claims asserted on behalf of all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD mutual fund trust through a discount broker ("Class").

This settlement is not an admission of liability or wrongdoing by the Defendant. It is an efficient compromise between the parties of their disputed positions.

To be eligible to obtain compensation from the settlement, Class Members must submit a Claim Form to the Administrator at *[insert Administrator website]* by *[insert]*.

For important information regarding the class action, to determine if you are a member of the Class, and to learn how to make a claim for compensation:

- View the long-form notice at *[insert Administrator website]*
- Contact the Administrator at:

[insert Administrator contact details]

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

The publication of this notice was authorized by the Superior Court of Justice of the Province of Ontario

SCHEDULE I
LONG-FORM SECOND NOTICE

DRAFT TEXT (subject to design)

[NTD: The language of the notice regarding claims for compensation is subject to settling the terms of the proposed Distribution Protocol, as the notice language will need to line up with the terms of the proposed Distribution Protocol.]

TD Mutual Funds Class Action Regarding Trailing Commissions Paid to Discount Brokers

Notice of Approved Settlement and Commencement of Claim-Filing Process

Read this notice carefully as it may affect your legal rights

THIS NOTICE IS TO:

All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to *[insert Date of Execution]*, units of a TD Mutual Fund through a discount broker, except for the Excluded Persons (“**Class**” and “**Class Members**”).

In the above class definition:

“**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which TD Asset Management Inc. (“**Defendant**”) is trustee or was trustee at any time on or prior to *[insert Date of Execution]* (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

“**Excluded Persons**” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who previously opted out of the class action.

Examples of discount brokers are BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, TD Direct Investing, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

A settlement (“**Settlement**”) has been reached in the class action against the Defendant (“**Action**”). The Ontario Superior Court of Justice (“**Court**”) has approved the Settlement. This notice contains important details about the Settlement and how to submit a claim for compensation from the Settlement.

IMPORTANT DEADLINE TO FILE CLAIM FOR COMPENSATION

Claims Bar Deadline (to file a claim for compensation): *[insert]*

IMPORTANT NOTE ABOUT SEPARATE SETTLEMENT FOR NON-DISCOUNT BROKER HOLDERS OF TD MUTUAL FUNDS

This settlement is only for the benefit of persons who held units of a TD mutual fund trust through a discount broker. If you held units of a TD mutual fund other than through a discount broker (e.g. through an investment advisor), there is a separate settlement for you. Please visit *[insert relevant website]* for more information about that settlement.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to discount brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to discount brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments.

The Defendant has denied these allegations and continues to deny all allegations.

On behalf of the Class, the Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

SETTLEMENT APPROVAL, FEE APPROVAL AND OTHER MATTERS

On *[insert]*, the Court approved the Settlement. The Settlement provides for the payment of C\$70,250,000 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members.

The Settlement Agreement provides that the claims of Class Members (who did not opt out) asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed.

The Settlement Agreement is not an admission of liability, wrongdoing or fault on the part of the Defendant, which has denied, and continues to deny, the allegations against it.

The Court awarded Siskinds LLP (“**Class Counsel**”) and Bates Barristers P.C. total legal fees in the amount of *[insert]*, plus disbursements of *[insert]*, plus applicable taxes on the fees and expenses. As is customary in such cases, Class Counsel conducted the class action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. The approved fees and disbursements will be deducted from the Settlement Amount before it is distributed to Class Members.

A funding agreement between the Plaintiff and Claims Funding International, PLC (“**Funder**”) was previously approved by the Court on June 20, 2019. Amounts owing to the Funder will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

The Court also approved the payment of an honorarium to the Plaintiff in the amount of *[insert]*. The honorarium will be deducted from the Settlement Amount before it is distributed to Class Members.

Expenses incurred or payable relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”) will also be paid from the Settlement Amount before it is distributed to Class Members.

The Settlement Amount includes all legal fees, the Funder’s commission, taxes and administrative expenses.

CLAIMS ADMINISTRATOR

The Court has appointed *[insert]* as the claims administrator for the Settlement (“**Administrator**”). The Administrator will, among other things: (i) receive and process claims for compensation from the Settlement; (ii) determine Class Members’ eligibility for and entitlement to compensation pursuant to the Distribution Protocol; (iii) communicate with Class Members regarding claims for compensation; and (iv) manage and distribute the Settlement Amount in accordance with the Settlement Agreement and the orders of the Court.

The Administrator can be contacted at:

[insert Administrator full contact details]

CLASS MEMBERS' ENTITLEMENT TO COMPENSATION

The Settlement Amount, after deduction of Class Counsel's fees and expenses, amounts payable to the Funder, the approved honorarium for the Plaintiff and Administration Expenses ("**Net Settlement Amount**") will be distributed to Class Members in accordance with the Distribution Protocol approved by the Court.

Class Members will be eligible for compensation if they submit a completed Claim Form, including any supporting documentation, with the Administrator, and their claim satisfies the criteria set out in the Distribution Protocol.

To be eligible for compensation, Class Members must submit their Claim Form **no later than [insert]** ("**Claims Bar Deadline**").

The most efficient way to file a claim is to visit the Administrator's website at [insert] and file an online claim. The website provides step by step instructions on how to file a claim. In order to verify claims, the Administrator will require supporting documentation, including brokerage statements or confirmations evidencing the claimed transactions. Accordingly, Class Members should visit the Administrator's site as soon as possible so that they have time to obtain the required documentation prior to the Claims Bar Deadline.

While online claims are recommended and preferred, the Administrator will also accept Claim Forms filed by mail or courier. To obtain a copy of the Claim Form, Class Members may contact the Administrator to have one sent by email or regular mail. Claim Forms sent by mail or courier should be sent to the Administrator using the contact details above.

If you have questions about how to complete or file a Claim Form, the documentation required to support a claim, or whether you are a Class Member, please contact the Administrator.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information in both languages are available on the Administrator's website at [insert].

Questions relating to the Action may be directed to the Administrator using the contact details above or Class Counsel:

Zohra Bhimani
Siskinds LLP
275 Dundas Street, Unit 1, P.O. Box 2520, London, ON N6B 3L1
Tel: 226-330-0409
Email: zohra.bhimani@siskinds.com

Si vous avez besoin d'aide en français, veuillez contacter les avocats du groupe en utilisant les coordonnées ci-dessus et nous dirigerons votre demande vers une personne appropriée.

The publication of this notice was authorized by the Ontario Superior Court of Justice

SCHEDULE J
INTERNET BANNER SECOND NOTICE

DRAFT TEXT (subject to design)

Have you held units of a TD mutual fund
through a discount broker?

You may be eligible to obtain compensation
from a class action settlement.

Click to learn your legal rights.

[Link to Administrator website]

This is Exhibit "C" mentioned and referred to in the Affidavit of Charles M. Wright AFFIRMED/SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. The affiant was located in the City of La Quinta, in the State of California, in the United States of America, and the commissioner, Donna Lynn McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

TD Mutual Fund Trailing Commission Class Action

Summary Rationale for Settlement reached on behalf of investors who held TD Mutual Funds through discount brokers

This class action (“**Westwood Action**”) is on behalf of all investors who held TD Mutual Fund units through a discount broker (“**Class Members**”).¹ The Defendant is TD Asset Management Inc. (“**TDAM**”) the trustee and manager of the TD Mutual Funds. The Plaintiff in the *Westwood Action* asserts, among other things, that TDAM improperly paid trailing commissions to discount brokers on behalf of Class Members resulting in Class Members suffering a loss in value of their TD Mutual Fund units. The Plaintiff says that the payment of those trailing commissions was a breach of trust and fiduciary duty, and that TDAM did not adequately or accurately disclose the fact or purpose of those payments to the Class Members.

The Settlement Agreement, if approved by the Court, provides that TDAM will pay \$70.25 million for the benefit of Class Members in exchange for the full and final release of the claims asserted in the *Westwood Action*. TDAM denied and continues to deny the allegations made in the *Westwood Action*.

The following is a brief summary of some of the important risk factors considered by the Plaintiff and the lawyers for the Class in concluding that the Settlement is fair and reasonable. These factors, and others, will be explained in greater detail in the motion materials to be filed in support of Court approval of the Settlement, which will be posted at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/> in advance of the settlement approval hearing scheduled for December 9, 2024.

The factors discussed below are case-specific risks that arose on the particular facts of the *Westwood Action*. In addition to these case-specific risks, there are also generic risks that are inherent in all litigation that influence the range of outcomes. Such generic risks refer to the risks arising from the passage of time, and the procedural risks that exist in litigation of this complexity, such as the risk that witnesses will not appear or will not give the evidence expected of them, and the risk of adverse procedural or evidentiary rulings. With the passage of time, documentary evidence may no longer be available, and witnesses may no longer be available or their memories of the material events may fade, all of which would impact the ability to win the case.

The risk that the Court would find that there was no misconduct

TDAM argued that its conduct was not illegal or otherwise in breach of its obligations. TDAM argued that the mutual fund industry is heavily regulated in Canada and regulators permitted the payment of trailing commissions to discount brokers. It was not until June 2022 that trailing commission payments to discount brokers were banned. TDAM complied with the ban and stopped paying trailers at that point in time. TDAM argued that

¹ The Class is formally defined as: All persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to September 11, 2024, units of a TD Mutual Fund through a discount broker, except for the Excluded Persons. For more information on the class definition see the long form notice, which is available [here](#).

it cannot be forced to compensate investors for trailing commission payments made when it was legally allowed to make them.

In a class action brought against discount brokers arguing that they should not have received trailing commissions, the Court accepted similar arguments in dismissing the action.² If the Court accepted these arguments in the *Westwood* Action, there would be no recovery for Class Members.

The risk that the Court would conclude that Class Members, acting reasonably, ought to have been aware of the alleged misconduct

TDAM argued that the trailing commission payments to discount brokers were fully disclosed to Class Members and that they would have known about those payments and that the payments were causing a loss if they had acted reasonably. If this argument was successful, it could have led the Court to find that certain defences were available to TDAM limiting Class Members' potential recovery or resulting in no recovery for some or all Class Members.

First, TDAM raised a limitation period defence. A limitation period is the legal term for a time limit to commence litigation. Losses from wrongful conduct generally cannot be recovered through litigation unless the litigation is started within 2 years of the date on which a person would have discovered their claim if they had been reasonably diligent – *i.e.* when the person ought reasonably to have known that they suffered a loss because of the defendant's misconduct.

TDAM's limitation period argument was that a reasonable person would have discovered their claim at the time they purchased their TD Mutual Fund units because the payments were disclosed in the documents that were required to be sent to, or were available to, investors acquiring TD Mutual Funds. If this argument was accepted, any losses in relation to trailing commissions paid more than 2 years prior to the action being commenced would not be recoverable. Alternatively, a more extreme version of this argument was that any losses in relation to trailing commissions paid on mutual fund units purchased more than 2 years prior to the action being commenced would not be recoverable, even if the trailing commissions were paid less than 2 years prior to the action being commenced.

Second, TDAM relied on a defence that, because the Class Members ought to have been aware of the payment of trailing commissions to discount brokers, they consented to the payments and cannot resile from that consent. If accepted, this would be a full defence to the claims.

The risk that a significant number of Class Member claims were released

TDAM argued that, under terms of the operative trust instruments, Class Members who redeemed their TD Mutual Fund units (*i.e.* sold them) released their claims against TDAM

² *Frayce v. BMO Investor Line Inc. et al*, 2023 ONSC 16.

- 3 -

with respect to those units. If the Court accepted this argument, then those Class Members would not have a claim for the TD Mutual Fund units they redeemed.

The risk that the Court would reduce damages for services provided by discount brokers

TDAM argued that any recovery should be limited to the actual trailing commissions paid by TDAM minus a reasonable payment for the purported services provided by discount brokers to Class Members. TDAM contended that a reasonable payment would be the annual discount series trailing commission rate of 0.25% of an investor's TDAM mutual fund holdings (note – the advisor or full-service trailing commission typically ranges from 0.50% to 1.00%).

If the Court accepted this argument, it would result in a reduction of the aggregate value of the trailing commissions paid at issue in the *Westwood* Action by approximately 52%. There may be no loss suffered by Class Members who held any discount series TD Mutual Fund units (D-series or e-series) or other series paying less than 0.25%. The recovery on all other series would be the trailers paid minus the annual 0.25% purportedly reasonable trailing commission.

This is Exhibit "D" mentioned and referred to in the Affidavit of Charles M. Wright AFFIRMED/SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. The affiant was located in the City of La Quinta, in the State of California, in the United States of America, and the commissioner, Donna Lynn McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

TD Mutual Fund Trailing Commission Class Action

Guide to the Distribution Protocol

The following is a guide to the Distribution Protocol and a brief summary of some of the factors considered by the Plaintiff and Class Counsel in concluding that the Distribution Protocol is fair and reasonable. A more detailed explanation will be provided in the motion materials to be filed in support of Court approval of the Settlement and the Distribution Protocol, which will be posted at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/> in advance of the settlement approval hearing scheduled for December 9, 2024.

A copy of the Distribution Protocol is available at the above website. If anything in this document is inconsistent with the Distribution Protocol, the Distribution Protocol prevails.

PART 1 – BACKGROUND

The Settlement Agreement provides for \$70.25 million to be paid into a fund to be distributed to Class Members, after deductions for certain expenses as described below.

1. Who are Class Members, Claimants and Authorized Claimants?

Class Members are all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to September 11, 2024, units of a TD Mutual Fund¹ through a discount broker², except for the Excluded Persons³.

A Claimant is a Class Member who submits a properly completed claim and all required supporting documentation to the Administrator within the specified time for doing so. A Claimant who makes a valid claim for compensation and whose assessed Trailing Commissions Paid are greater than zero is an “Authorized Claimant”.

2. How much money will be distributed?

Certain expenses will be deducted from the Settlement Amount before the balance can be distributed. Those expenses include counsel fees, counsel disbursements, the commission of the litigation funder, the costs of providing notice to Class Members and

¹ “TD Mutual Funds” means all mutual fund trusts (including, without limitation, all series of units thereof) of which the Defendant is trustee or was trustee at any time on or prior to September 11, 2024 (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

² Examples of discount brokers are TD Direct Investing, BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

³ “Excluded Persons” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who validly opted or opts out of the class action.

- 2 -

settlement administration expenses. All expenses must be approved by the Court. The remainder, after the deduction of Court approved expenses, is called the “Net Settlement Amount”. The Net Settlement Amount will be distributed to Authorized Claimants in accordance with the Distribution Protocol.

PART 2 – RATIONALE FOR THE DISTRIBUTION PROTOCOL

The Distribution Protocol distributes the Net Settlement Amount to each Authorized Claimant based on the amount of his, her or its Trailing Commissions Paid as a proportion of the total amount of Trailing Commissions Paid of all Authorized Claimants.

In so doing, the Distribution Protocol will distribute money to Class Members in a manner that tracks the losses alleged in the litigation. The alleged losses are those suffered by Class Members as a result of TDAM paying trailing commissions to discount brokers on their behalf. In Class Counsel’s opinion, dividing compensation amongst Class Members based on their approximate alleged losses is fair and reasonable.

The Distribution Protocol is designed to be efficient and user friendly. As described further below, it allows Class Members to rely on data Class Counsel obtains from the Defendant or discount brokers to make a claim to the extent that data is available. All other Claimants will be able to make claims using their own information and records of their TD Mutual Fund holdings through discount brokers. The use of Defendant or discount broker data should substantially increase the speed and efficiency of the claims process for the benefit of Claimants.

PART 3 – DETERMINING ELIGIBILITY AND ENTITLEMENT

1. Trailing Commissions Paid

A Claimant’s eligibility for compensation and the amount of compensation they receive is based on their **Trailing Commissions Paid**.

Each Claimant who submits a valid claim and has Trailing Commissions Paid greater than zero (0) will be an Authorized Claimant eligible to receive a proportionate share of the Net Settlement Amount (as described in the next section) subject to a minimum entitlement threshold of \$25.

The Administrator’s calculation of Trailing Commissions Paid for a particular Claimant will vary depending on the source and nature of the available information. A Claimant’s Trailing Commissions Paid shall be determined as follows:

A. Actual trailers paid: Where the Defendant or a discount broker provides information to the Administrator on the actual amount of trailing commissions paid to a Claimant’s discount broker by the Defendant on the Claimant’s behalf, that amount shall be the Trailing Commissions Paid.

B. Estimated trailers paid based on asset value: If the information described in “A” is unavailable, Trailing Commissions Paid will be based on the aggregate market value of a Claimant’s TD Mutual Fund units held through a discount broker

- 3 -

assuming that trailing commissions were charged at a rate of 0.75% annually. For example, if monthly market value information is available, the Trailing Commissions Paid will be calculated as follows:

For each month, Trailing Commissions Paid equals the [Aggregate market value of all TD Mutual Fund units held by the Claimant through the discount broker in the applicable month] multiplied by [0.75%] multiplied by [1/12]. The amount determined for each month over the period during which the TD Mutual Fund units were held by the Claimant will be added together.

Where the Administrator has a combination of the information described above, the Administrator will give priority to “A” and then “B”. For “B”, the Administrator will use the information available over the shortest time interval first (e.g. using monthly first, then quarterly, then at six-month intervals, then annually).

For all Claimants, Trailing Commissions Paid on or after June 1, 2022 shall be deemed to be zero.⁴

2. Proportionate Allocation of Net Settlement Amount to Authorized Claimants

After each Authorized Claimant’s Trailing Commissions Paid are determined, the Net Settlement Amount will be allocated to Authorized Claimants proportionately based upon each Authorized Claimant’s Trailing Commissions Paid. What this means is that each Authorized Claimant will be entitled to a share of the Net Settlement Amount equal to their relative share of the total Trailing Commissions Paid of all Authorized Claimants. For example, if an Authorized Claimant has Trailing Commissions Paid of \$10,000 and the total Trailing Commissions Paid was \$100,000,000, she would be entitled to 0.01% of the Net Settlement Amount.

PART 4 – THE CLAIMS PROCESS

There are two ways a claim for compensation can be made. *First*, there is a streamlined process available where the Administrator has been provided with information from TDAM or a discount broker that allows the Administrator to calculate the Class Member’s Trailing Commissions Paid. *Second*, there is a full claims process for Class Members when that information is not available from TDAM or a discount broker.

i. The Streamlined Claims Process

Where TDAM or a discount broker (to the extent the information is reasonably available) provides the Administrator with information to calculate the Trailing Commissions Paid of a particular Class Member and their contact information, that Class Member will be entitled to rely on the information provided when making a claim for compensation.

⁴ June 1, 2022 is the date when TDAM stopped paying trailing commissions to discount brokers because of a regulatory prohibition on the practice.

- 4 -

To facilitate this process, the Administrator will send such Class Members an email or letter with a username and password to log-on to the online claims portal created by the Administrator. The online claims portal will be pre-populated with information on the Trailing Commissions Paid by the Class Member based on the information provided by TDAM or their discount broker. The Class Member will be able to rely on that pre-populated information to submit a claim for compensation without any further supporting documentation. As described in more detail in the Distribution Protocol, the Class Members may provide supplemental information using the full claims process described below if they disagree with the pre-populated Trailing Commissions Paid or wish to expand their claim for a period not covered by their pre-populated information.

It is Class Counsel's view that this should substantially increase the efficiency of the claims process for a significant number of Class Members.

ii. The Full Claims Process

All other Claimants can make a claim using the online portal created by the Administrator. The portal will be designed by the Administrator to make the claims process as efficient as possible. Claimants using the full claims process must provide documentation supporting their claim. The Administrator will be flexible in their approach to supporting documentation.

PART 5 – SAMPLE CALCULATIONS FOR ILLUSTRATION PURPOSES

NOTE: A Claimant's actual entitlement based on their Trailing Commissions Paid can vary significantly from the amounts described below depending on the actual aggregate amount of Trailing Commissions Paid of all Authorized Claimants and the actual Net Settlement Amount available for distribution.

Example 1:

Assumed Facts

- TDAM provides records to the Administrator showing that it paid \$10,000 in trailing commissions to the Claimant's discount broker on the Claimant's behalf with respect to their TD Mutual Fund units held through that discount broker;
- The sum of all Authorized Claimants' Trailing Commissions Paid is \$100,000,000; and
- The Net Settlement Amount available for distribution is \$44,000,000.

Application of Distribution Protocol to the Assumed Facts

- The Claimant has Trailing Commissions Paid of \$10,000. As a result, they are an Authorized Claimant eligible for compensation under the Distribution Protocol.
- The Authorized Claimant is entitled to \$4,400 in compensation, calculated as: $[\$10,000 \div \$100,000,000] \times \$44,000,000$

Example 2:*Assumed Facts*

- A Claimant's aggregate annual value of TD Mutual Fund units held through a discount broker are as follows:

2012	\$50,000
2013	\$51,000
2014	\$51,550
2015	\$53,000
2016	\$60,000
2017	\$63,000
2018	\$66,000
2019	\$68,000

- The sum of all Authorized Claimants' Trailing Commissions Paid is \$100,000,000; and
- The Net Settlement Amount available for distribution is \$44,000,000.

Application of Distribution Protocol to the Assumed Facts

- The Claimant has Trailing Commissions Paid of \$3,469.13, calculated as the sum of A to G:

A.	\$50,000 multiplied by 0.75% =	\$375.00
B.	\$51,000 multiplied by 0.75% =	\$382.50
C.	\$51,550 multiplied by 0.75% =	\$386.63
D.	\$53,000 multiplied by 0.75% =	\$397.50
E.	\$60,000 multiplied by 0.75% =	\$450.00
F.	\$63,000 multiplied by 0.75% =	\$472.50
G.	\$66,000 multiplied by 0.75% =	\$495.00

- 6 -

H. \$68,000 multiplied by 0.75% = \$510.00

TOTAL: \$3,469.13

- As a result, the Claimant is an Authorized Claimant eligible for compensation under the Distribution Protocol; and
- The Authorized Claimant is entitled to \$1,526.42, calculated as $[\$3,469.13 \div \$100,000,000] \times \$44,000,000$.

PART 6 – DISPUTE RESOLUTION

In the event of a denial of a claim by the Administrator and subject to the limitations described in the next paragraph, a Claimant can request reconsideration of their claim by the Administrator within 45 days of receiving a notice from the Administrator that their claim has been denied in its entirety. If the claim continues to be denied in its entirety after a request for reconsideration, Claimants will have a final right of appeal to a Court-appointed arbitrator.

To promote an efficient and expeditious administration process, Claimants will not be able to make a request for reconsideration to the Administrator or have an appeal right: (a) where the claim is allowed but the Claimant disputes the amount of the Trailing Commissions Paid or their individual compensation; (b) for claims filed after the Claims Filing Deadline; and (c) where the appeal or request for reconsideration, if successful, will result in the Claimant's Trailing Commissions Paid being less than \$500.

This is Exhibit "E" mentioned and referred to in the Affidavit of Charles M. Wright AFFIRMED/SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. The affiant was located in the City of La Quinta, in the State of California, in the United States of America, and the commissioner, Donna Lynn McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

5650 Yonge Street, Suite 1700
Toronto, ON M2M 4G3

T 416.913.8313
ekholodenko@questrade.com



February 4, 2020

Submitted via Email

British Columbia Securities Commission

Alberta Securities Commission

Financial and Consumer Affairs Authority of Saskatchewan

Manitoba Securities Commission

Ontario Securities Commission

Autorité des marchés financiers

Financial and Consumer Services Commission of New Brunswick

Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Nova Scotia Securities Commission

Securities Commission of Newfoundland and Labrador

Registrar of Securities, Northwest Territories

Registrar of Securities, Yukon

Superintendent of Securities, Nunavut

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin,
Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22e etage
C.P. 246, tour de la Bourse
Montreal, Québec H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Trailing Commission Payment Ban to Order Execution Only dealers – related to Proposed Amendments to National Instrument 81-105 Mutual Fund Sales Practices and Related Consequential Amendments & CSA Staff Notice 81-332 Next Steps on Proposals to Prohibit Certain Investment Fund Embedded Commissions - Comments from Questrade, Inc.

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We thank you for the opportunity to provide our comments to the Canadian Securities Administrators (the "CSA") with respect to viable alternatives to the implementation of Proposed Amendments to National Instrument 81-105 ("NI 81-105") and CSA Staff Notice 81-322.

Introduction to Questrade

Since its establishment in 1999, Questrade Inc. ("Questrade") has been a catalyst for improving the financial lives of Canadian investors. Questrade is nationally recognized as an advocate for consumers, offering a wide array of products, a transparent and value-based pricing structure and high quality customer service. Questrade provides self-directed and managed investing. Every product and service that Questrade offers is designed to minimize fees and friction for investors.

Questrade is a wholly-owned Canadian entity that has been named **Canada's Best Online Broker for 2019** by *MoneySense* in partnership with Surviscor Inc., the most definitive ranking of online brokers in Canada. Questrade was also named as one of Canada's Best Managed Companies in 2019 for the eighth year in a row with Platinum distinction, which honours Canadian companies that have implemented world-class business practices and created value in innovative ways. In 2018, Questrade was recognized as one of Canada's Most Admired Corporate Cultures™ and honoured with the 2018 and 2019 DALBAR Seal of Service Excellence for its best-in-class customer service.

At inception, over twenty years ago, Questrade launched a client centric pricing strategy, offering investors the lowest trade commissions in the industry. We continue to champion fair pricing in all financial services and have been recognized as "Canada's low-cost leader for the mainstream investor."¹

Mutual Fund Industry in Canada

We all depend on the financial system in one way or another. Consumers rely on it to safeguard and grow their earnings; industry counts on credit to sustain and develop business objectives. Financial service firms that provide products and services consumers need and who treat customers fairly at every stage of the sales process will not only succeed, but will build consumer confidence and enhance profitability. Trust and integrity are integral components, which fuel companies and our economy².

Canadians pay some of the highest fees in the world for investment products such as mutual funds. According to a 2017 Morningstar Global Fund Investor Experience Study, Canada ranked in the bottom of the scorecard for fees and expenses³. The same study, conducted in 2015, ranked Canada in the last

¹ Carrick, Rob. "Investors, Beware The Shifting World Of Online Trading Fees". The Globe And Mail, March 25, 2016, <https://www.theglobeandmail.com/globe-investor/personal-finance/household-finances/investors-beware-the-shifting-world-of-online-trading-fees/article29394835/>

² See <https://www.ft.com/content/e70cfad2-07ee-11e7-ac5a-903b21361b43>

³ Canada is in the "bottom bucket" for fees as a result of high fees in high asset weighted median expenses. Morningstar. Morningstar Global Fund Investor Experience Study. October 3, 2017, p. 22, <http://www.morningstar.com/content/dam/morningstar-corporate/pdfs/global-fund-investor-experience/GlobalFundInvestorExperienceReport2017.pdf>.



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place amongst 25 countries with a score of D-. Participants at Questrade focus groups, which are conducted nationally, cite high, hidden fees as their greatest concern. In particular, embedded commissions are one of the key culprits in consumer anxiety over high investment fees.

In 2015, the Ontario Securities Commission conducted a Mutual Fund Fee Research study⁴ which concluded as follows:

- Compensation influences the flow of money into mutual funds. Higher embedded commissions stimulate sales.
- Advisor recommendations are sometimes biased in favour of alternatives that generate more commission for the advisor.
- Advisors push investors into riskier funds.

The impact of high fees on investor returns is significant. The longer the time horizon, the more dramatically fees impact investor returns. Costs are an important determinant of long-term returns from collective investments such as mutual funds⁵.

In the same report FAIR Canada found:

Independent academic research resoundingly supports the contention that mutual fund fees in Canada are among the highest in the world. While industry lobby groups challenge the findings of such studies, the arguments we have heard made in defence of high fees in Canada, for example, suggesting the comparisons are not “apples to apples” or suggesting that the size of the market in Canada inhibits economies of scale, are meritless.⁶

The lack of transparency between advisors and investors regarding mutual fund fees has become an increasing regulatory concern. In a study published by the Canadian Competition Bureau in December 2017, the Bureau concluded:

The opacity of embedded commissions has also exacerbated the principal-agent problem that can exist in industries where customers rely on a supplier’s expertise to make decisions. When suitable for a client, for instance, the advisor may be incentivized to recommend the fund with the higher commission, acting on the lack of transparency. Similarly, advisors representing large fund issuers (e.g. large banks and insurers) may have increased incentives to recommend the funds issued by their firm, rather than those that may cost less. Ultimately, the investor ends up paying more (and saving less) than in a market with price transparency and faces a product selection that is limited to a subset of what is actually available.⁷

⁴ Mutual Fund Fee Research. Ontario Securities Commission, 2015, Mutual Fund Fee Research, www.osc.gov.on.ca/documents/en/Securities-Category8/rp_20150611_81-407_mutual-fund-fee-research.pdf.

⁵ CSA Mutual Fund Fees - FAIR Canada". FAIR Canada, April 12, 2013, p.5, <https://faircanada.ca/submissions/csa-mutual-fund-fees/>

⁶ ibid

⁷ Technology Led Innovation in the Canadian Financial Services Sector. Competition Bureau Canada, December 2017, p.3, Technology Led Innovation in the Canadian Financial Services Sector, [www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/FinTech-MarketStudy-December2017-Eng.pdf/\\$FILE/FinTech-MarketStudy-December2017-Eng.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/FinTech-MarketStudy-December2017-Eng.pdf/$FILE/FinTech-MarketStudy-December2017-Eng.pdf)

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Restriction on payment and acceptance of trailing commissions where no suitability determination is made

Questrade agrees with the CSA's efforts to enhance conflict of interest mitigation rules and increased transparency for investors. We also support restrictions on the payment and acceptance of embedded commissions, where no suitability determination is made but recommend flexibility in how those restrictions are applied.

With the global advent of technology and disruption in all service sectors, it is time to end embedded commissions to better meet the interests of Canadian investors, enhance competition and foster innovation in our industry. The four 'Ds' of disruption – digitisation, de-risking, disintermediation and democratisation – are already transforming the financial landscape. In the next ten years, changing investor demands and emerging technology such as blockchain will likely overhaul existing models, speed processes and streamline costs even further.

The time is ripe for the CSA to foster positive change, which will enhance technology solutions, offering greater transparency that will meet regulatory requirements and investor expectations.

While the industry's guiding principle should always be to act in the best interests of the investor, Questrade respectfully submits that allowing for flexibility in achieving this goal will meet the CSA's mandate while encouraging innovation in our sector.

Mutual Fund Maximizer

Questrade launched Mutual Fund Maximizer ("Maximizer") in 2009, three years before Canadian regulators began their review of the appropriateness of embedded commissions and the potential conflict of interest they create. This program was initiated by our executive team who did not deem it fair to keep trailer fees when the firm was not providing any advice. It was decided that the trailer fee would be rebated back to the customer minus the administrative costs for managing the program.⁸

The Maximizer service enables Questrade to rebate trailer fees on mutual funds held at the firm to all its customers. The rebate/reimbursement happens automatically when a client either purchases a mutual fund or transfers their mutual funds into a Questrade account. No additional process is required. The actual yearly costs and savings of using this service depend on the amount of money a client has invested and the trailing fees associated with a particular mutual fund.

The CSA Proposal would effectively force Questrade to end a service that our clients benefit from, create additional friction and a bad customer service experience. The Maximizer is a proven, seamless, simple solution and the least intrusive way to meet the CSA's goals. It is a client-centric approach, which

⁸ See <https://www.theglobeandmail.com/globe-investor/investment-ideas/online-broker-lets-mutual-fund-investors-unhitch-from-trailers/article782929/>



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requires no disruption to the client's current portfolio and no change in administration from mutual fund dealers to accommodate the OEO community. Moreover, it would be unjust to impose additional hardships and costs on Questrade, by requiring the firm to abandon a solution that has been meeting the CSA's objectives since 2009.

Questrade's mission is to provide easy to use, and easy to understand financial services for Canadians at a lower cost, which enables our customers to keep more of their money. Part of that mission is to provide Canadians with the financial products that they want. If that product is a mutual fund that pays a trailer fee, we believe that a fully transparent program like Maximizer is a fair and viable solution that achieves the CSA's objectives.

Conclusion

We support the CSA's objective to do away with hidden, unclear fees for financial products and services. The OEO community stands together with the CSA in supporting greater transparency and awareness for all investors. In our view, there are various ways to achieve this objective, one of which is through rebates such as Mutual Fund Maximizer. This model has been in practice for the past eleven years and has enabled our DIY clients to access the products that they want with ease and full transparency.

We would be pleased to take part in further discussion or consultation on this issue and look forward to working collaboratively with our regulators and all industry participants to find an equitable farseeing resolution that will enable Canadians to keep more of their money.

Sincerely,

A handwritten signature in black ink, appearing to be 'EK' or similar initials, written in a cursive style.

Edward Kholodenko
President & CEO, Questrade, Inc.

This is Exhibit "F" mentioned and referred to in the Affidavit of Charles M. Wright AFFIRMED/SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. The affiant was located in the City of La Quinta, in the State of California, in the United States of America, and the commissioner, Donna Lynn McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

AMENDED AND RESTATED AGREEMENT REGARDING TRAILERS ACTIONS**BETWEEN:****Siskinds LLP (“Siskinds”)**

– and –

Bates Barristers P.C. (“Bates”)

WHEREAS in 2018 Siskinds and Bates, as co-counsel, commenced seven class actions in Ontario styled as *Gilani v. BMO Investments Inc.*, Court File No. CV-18-00611748-00CP, *Pozgaj v. Canadian Imperial Bank of Commerce et al.*, Court File No. CV-18-00605345-00CP, *Pozgaj v. Mackenzie Financial Corporation et al.*, Court File No. CV-18-00610311-00CP, *Pozgaj v. National Bank Investments Inc. et al.*, Court File No. CV-18-00611745-00CP, *Ross v. RBC Global Asset Management Inc. et al.*, Court File No. CV-18-00611743-00CP, *Stenzler v. TD Asset Management Inc.*, Court File No. CV-18-595380-00CP, and *Stenzler v. 1832 Asset Management L.P.*, Court File No. CV-18-600380-00CP (each a “**Class Action**” and together, “**Class Actions**”);

AND WHEREAS in 2020 Bates resigned as Siskinds’ co-counsel in the Class Actions and ceased to be a lawyer of record for the Plaintiffs in the Class Actions, subject to certain terms agreed between Siskinds and Bates at that time, including Siskinds’ confirmation at the time of Bates’ continuing entitlement to 25% (without setoff or deduction) of any fees awarded to class counsel in the Class Actions, being the original fee entitlement agreed between Siskinds and Bates at the inception of their joint efforts to undertake the Class Actions (“**2020 Agreement**”);

AND WHEREAS Siskinds and Bates wish to amend and restate the terms of the 2020 Agreement;

Other Class Actions

1. Siskinds confirms that, following Bates’ resignation as Siskinds’ co-counsel in the Class Actions, it has no objection to *Michaud et al. v BBS Securities Inc. et al.*, Supreme Court of British Columbia, Court File No. VLC-S-1912710 or subsequently *Frayce v BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-00634551-00CP and Bates’ participation in those proceedings as co-counsel with Investigation Counsel PC and Koskie Minsky LLP.
2. Siskinds will not enter into any consortium or cooperation agreement or other arrangement with any other firm in respect of any action(s) that might be filed against discount brokers relating to their receipt of trailers. For greater certainty, this includes Koskie Minsky LLP with respect to *Frayce et al. v BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-00638868-00CP and *Frayce v BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-00634551-00CP.

Fees and Fee Approval Motions

3. In the event of success in a Class Action, Siskinds will bring a motion for Court approval of class counsel fees, disbursements and taxes in the Class Action. Siskinds has full discretion

as to the total amount of class counsel fees for which Court approval is sought in the Class Actions.

4. Bates will provide cooperation and assistance requested by Siskinds that is reasonably necessary to obtain Court approval of class counsel fees in the Class Actions, including, without limitation, providing information to Siskinds as to the value of the time and disbursements incurred by Bates on the Class Actions, and swearing an affidavit in support of the fee approval motions.
5. Subject to section 7 below, in the event that the Court approves class counsel fees in a Class Action, Siskinds will receive 80% of those Court-approved fees and Bates will receive 20% of those Court-approved fees. For greater certainty, subject to section 7 below, if the amount of class counsel fees requested by Siskinds on a fee approval motion in a Class Action is not approved and instead the Court approves a reduced amount of class counsel fees, Siskinds will receive 80% of those Court-approved fees and Bates will receive 20% of those Court-approved fees. This allocation is intended to represent a reasonable *quantum meruit* fee payment to Bates for cooperation and assistance provided to Siskinds in the development and conduct of the Class Actions.
6. If the Court orders a holdback of a portion of the class counsel fees, each tranche of class counsel fees shall be shared by Siskinds and Bates proportionately in accordance with the 80%/20% allocation set out in section 5 above.
7. Despite section 5 above, if the Court specifically refuses to approve the payment of class counsel fees to Siskinds as contemplated by this Agreement (in whole or in part), or if the Court specifically refuses to approve the payment of class counsel fees to Bates as contemplated by this Agreement (in whole or in part), Siskinds and Bates reserve their rights on this issue and any unresolved dispute will be arbitrated in accordance with sections 10 to 13 below.
8. If and when fees are payable to Siskinds and Bates, they shall be paid their fees out of trust or otherwise at the same time.

Providing this Agreement to the Court

9. This Agreement will be put in evidence or otherwise provided to the Court in full or redacted form on a fee approval motion in a Class Action, and the relief on that motion shall include a request for approval of this Agreement.

Dispute Resolution

10. In the event of a dispute that cannot be resolved amicably regarding this Agreement (including as contemplated by section 7 above), the dispute shall be submitted to confidential binding arbitration in Ontario by a retired judge or other mutually-agreeable neutral third party.

11. If Siskinds and Bates cannot agree on the identity of the arbitrator within seven days after a firm first requests arbitration in writing, the administrator of ADR Chambers shall designate a retired judge to be the arbitrator.
12. The arbitrator shall make his or her decision as expeditiously as possible and may in his or her discretion give any directions regarding procedures, relaxation of rules of evidence, etc., which are deemed necessary to meet that goal.
13. The arbitrator's decision shall be final and binding and, to the fullest extent possible permitted by law, Siskinds and Bates waive all rights of appeal and judicial review.

Execution

14. This Agreement and any amendment(s) may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Signatures sent by facsimile, via email in pdf format, or by electronic transmission through a commercially accepted document signing application (e.g., DocuSign) shall be deemed originals.

Effective Date

15. This Agreement shall be effective as of the date it has been executed by both Siskinds and Bates.

No Partnership Created

16. Nothing in this Agreement shall constitute a partnership, joint venture or agency agreement between Siskinds and Bates.

Successor Firms

17. In the event either Siskinds or Bates merges with another law firm, this Agreement shall be binding on the successor firm.

Termination

18. This Agreement shall expire after the final resolution of all Class Actions and the payment of all fees contemplated by this Agreement, unless otherwise agreed in writing.


Entire Agreement

19. This Agreement constitutes the entire agreement between Siskinds and Bates, and no representation, warranty or collateral agreement affects this Agreement unless expressed in it. Any amendments to this Agreement shall be in writing signed by the parties.


Governing Law

20. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and Canada applicable therein.

Agreed this 8th day of March, 2024.

DocuSigned by:

866D01A5E5E14CD...
Siskinds LLP
By: Anthony O'Brien

Agreed this 8th day of March, 2024.

DocuSigned by:

F8D2A0202D3A466...
Bates Barristers P.C.
By: Paul Bates

This is Exhibit "G" mentioned and referred to in the Affidavit of Charles M. Wright AFFIRMED/SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. The affiant was located in the City of La Quinta, in the State of California, in the United States of America, and the commissioner, Donna Lynn McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE BELOBABA

)
)
)

Thursday, THE 20 DAY
OF June, 2019



BETWEEN

GARY STENZLER

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order approving the terms of a litigation funding agreement (the "**Agreement**") entered into with Claims Funding International, PLC ("**CFI**"), was heard on June 20, 2019 :

ON READING the materials filed by the Plaintiff, and on hearing the submissions of counsel for the Plaintiff concerning whether the Agreement should be approved, and if so, upon what terms;

AND ON BEING ADVISED that the Defendant does not oppose this Order;

1. **THIS COURT ORDERS** that:

- (a) the Agreement is approved, subject to the terms and conditions herein;
- (b) CFI shall pay into court the following amounts, in the form of cash, certified cheque or money order, or the posting of an irrevocable letter of credit in a form acceptable

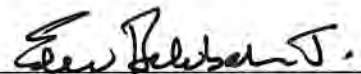
to the Defendant and to the Accountant of the Superior Court of Justice, and in accordance with Rule 72.02 of the *Rules of Civil Procedure*, as security for the Defendant's costs of this action, on the dates specified:

- (i) C\$75,000 by no later than 30 days after this Order is entered;
 - (ii) an additional C\$325,000 by no later than 30 days after any final order certifying this action as a class proceeding under the *Class Proceedings Act, 1992* and the resolution of any appeals from such order; and
 - (iii) an additional C\$600,000 by no later than 90 days before the scheduled trial date;
- (c) counsel for the Plaintiff shall notify counsel for the Defendant forthwith upon the posting of security in accordance with the terms of this Order;
 - (d) if CFI fails to provide security in accordance with the terms of this Order, the Defendant may bring a motion to have the action stayed or dismissed;
 - (e) CFI submits and attorns to the jurisdiction of the Ontario Superior Court of Justice for all purposes related to this litigation, including in relation to the enforcement of any costs order made in favour of the Defendant;
 - (f) amounts paid or posted pursuant to this Order shall be paid out to the Defendant in accordance with Rule 72.03 of the *Rules of Civil Procedure*, or as ordered by this Court;
 - (g) the Defendant shall be at liberty to seek to vary this Order at any time to increase the amount of security required to be posted by CFI, on notice to the Plaintiff and CFI who may oppose the motion;

- (h) nothing in this Order shall be interpreted as limiting the ability of the Defendant to seek to enforce any costs award against either the Plaintiff or CFI;
- (i) subject to further court order, no evidence obtained from the Defendant and that is not part of the public record may be provided to CFI without the written consent of the Defendant, provided that the Plaintiff and counsel for the Plaintiff may summarize and provide their comments and views on such evidence for the purposes of the reporting obligations set out in section 3 of the Agreement. To the extent any evidence obtained from the Defendant is provided to CFI, CFI shall be bound by Rule 30.1.01 of the *Rules of Civil Procedure* and shall be deemed to be a party to this action for the purposes of that Rule;
- (j) the Plaintiff may communicate any formal settlement offers made by the Defendant to CFI, and those communications and their contents shall be kept confidential pursuant to section 5 of the Agreement; and
- (k) this Order is made without costs.

ENTERED AT / INSCRIPT A TORONTO
 ON / BOOK NO
 LE / DANS LE REGISTRE NO

JUN 20 2019

The Honourable Justice Belobaba

STENZLER v. TD ASSET MANAGEMENT INC.

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

Siskinds LLP
680 Waterloo Street
London, ON N6A 3V8

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Garett M. Hunter (LSO#: 71800D)
Eva Markowski (LSO#: 74162Q)
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Bates Barristers P.C.
100 Lombard Street, Suite 302
Toronto, ON M5C 1M3

Paul Bates (LSO#: 22619D)
Tel: 416-869-9898
Fax: 416-362-2610

Lawyers for the Plaintiff

This is Exhibit "H" mentioned and referred to in the Affidavit of Charles M. Wright AFFIRMED/SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. The affiant was located in the City of La Quinta, in the State of California, in the United States of America, and the commissioner, Donna Lynn McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

LITIGATION FUNDING AGREEMENT

BETWEEN:

GARY STENZLER

Plaintiff

- and -

CLAIMS FUNDING INTERNATIONAL, PLC

Funder

RECITALS

- A. Gary Stenzler is the representative plaintiff (the "Plaintiff") in a class proceeding commenced in the Ontario Superior Court of Justice (the "Court") under court file number CV-18-595380-00CP (the "Proceeding") against TD Asset Management Inc. (the "Defendant") by way of Statement of Claim issued on April 6, 2018.
- B. The Plaintiff is concerned about his exposure to an Adverse Costs Order in the Proceeding.
- C. Claims Funding International, PLC (the "Funder") has a stated corporate objective of providing access to justice for the victims of corporate misconduct.
- D. The Funder has agreed to pay:
 - (i) ██████████ for disbursements incurred by the Plaintiff in the Proceeding; and
 - (ii) any Adverse Costs Order in the Proceeding;

on the terms set out in this Litigation Funding Agreement ("Agreement") and, as a condition of doing so, has requested that the Plaintiff seek Court approval of the within Agreement.

TERMS

1. Definitions

- 1.1 In this Agreement, unless a contrary intention appears elsewhere herein, the following terms have the meanings specified below:
 - (a) "**Administration Expenses**" means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to implementation and administration of the Settlement or judgment, as the case may be, including the costs of publishing and delivering notices, the fees, disbursements and taxes paid to the Administrator, and any other associated expenses approved by the Court as being payable from the Resolution Sum;
 - (b) "**Adverse Costs Order**" means any Costs Order made in the Proceeding against the Plaintiff and in favour of the Defendant or any other party to the Proceeding

in respect of costs incurred during the Term of Agreement, including applicable legal fees, disbursements and taxes;

- (c) **“Beneficial Costs Order”** means any Costs Order not subject to appeal made in the Proceeding against the Defendant and in favour of the Plaintiff in respect of costs incurred during the Term of Agreement, including applicable taxes;
- (d) **“Claim” or “Claims”** means the allegations the Plaintiff, and each Class Member, have made or may make against the Defendant arising out of, or connected with, the facts plead in the Proceeding, or any amendment thereto made on notice to the Funder;
- (e) **“Class” or “Class Members”** means all persons, wherever they may reside or be domiciled, who held or hold, at any time prior to the conclusion of the trial of the common issues in the Proceeding, units of a TD Mutual Fund (as defined in the Statement of Claim in the Proceeding) through a Discount Broker (as defined in the Statement of Claim in the Proceeding), except for the Excluded Persons, or such other definition as may be approved by any court, including, for the purposes of Settlement, any definition agreed upon by the parties to the Settlement;
- (f) **“Commission”** means the consideration paid to the Funder for providing Funding, namely where the Resolution:
 - (i) resolves the entire Proceeding, 7% of the proportion of the Net Resolution Sum allocated to the Class Members to a maximum amount of the Commission Cap; or
 - (ii) resolves only part of the Proceeding, 7% of the compensation paid to each Class Member from the Net Resolution Sum to a maximum amount of the Commission Cap, unless the Commission can otherwise be determined in a manner satisfactory to all parties to the Resolution;
- (g) **“Commission Cap”** is:
 - (i) \$10,000,000, if Resolution occurs at any time prior to the filing of the Plaintiff’s pre-trial conference brief; and
 - (ii) \$15,000,000, if Resolution occurs at any time thereafter.

Any Commission paid on any partial Resolution shall be considered in calculating the Commission payable on any subsequent Resolution. The Commission Cap shall apply to the aggregate of the Resolution Sum, not the individual Commission payments;
- (h) **“Costs Order”** means an order made by the Court requiring one or more parties to the Proceeding to pay some or all of the costs incurred by another party or parties to the Proceeding;
- (i) **“Date of Commencement”** means the date on which this Agreement is approved by the Court;
- (j) **“Excluded Persons”** means the Defendant; the past and present parents,

subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; and the past and present members of the independent review committee of each TD Mutual Fund (as defined in the Statement of Claim in the Proceeding);

- (k) **“Final Resolution”** means when all Claims asserted in the Proceeding are fully and finally extinguished or dismissed by Settlement or judgment of a court;
- (l) **“Funding”** means the Funder’s undertaking to pay:
 - (i) [REDACTED] for disbursements incurred by the Plaintiff in the Proceeding; and
 - (ii) any Adverse Costs Order in the Proceeding;in accordance with clause 4.1 below;
- (m) **“Lawyers”** means the law firms of Siskinds LLP and Bates Barristers P.C., or any firm of lawyers appointed in their place by the Plaintiff after providing notice of the intent to change Lawyers to the Funder;
- (n) **“Net Resolution Sum”** means the Resolution Sum less (i) any Funding paid by the Funder in this Proceeding; (ii) Lawyers’ fees and disbursements, including HST; and (iii) Administration Expenses;
- (o) **“Party” or “Parties”** means the parties to this Agreement, namely, the Plaintiff, including any successors, and the Funder;
- (p) **“Privilege”**, unless the context otherwise requires, means solicitor-client privilege, litigation privilege and settlement communication privilege;
- (q) **“Resolution”** means a Settlement, or judgment issued by a court, that resolves the Claim or part of the Claim in favour of the Plaintiff;
- (r) **“Resolution Sum”** means the gross amount or amounts, or the value of any goods or services, for which the Claim or part of the Claim is settled, or that is recoverable on any judgment that is given, in favour of the Plaintiff, including the value of any favourable terms of future supply of goods or services and including any interest, but specifically excluding costs recovered by the Plaintiff pursuant to a Beneficial Costs Order;
- (s) **“Settlement”** means an agreement which provides for the resolution of the Claim or part of the Claim which is approved by a court following provision of advice from the Lawyers that such agreement is reasonable having regard to all contingencies, and includes any compromise, discontinuance or waiver of the Claim or part of the Claim. **“Settles”** shall be construed accordingly;
- (t) **“Term of Agreement”** means the period of time in which the Agreement is in full force and effect, namely, the period beginning on the Date of Commencement and continuing in operation until:
 - (i) the Proceeding, and any appeal funded by the Funder, reaches a Final

Resolution;

(ii) the Funder has complied with all of its obligations arising pursuant to this Agreement; and

(iii) the Commission has been paid to the Funder;

OR, alternatively,

(iv) the Termination of the Agreement as provided in clauses 11 and 12;

(u) **“Termination”** means:

(i) a cessation of the effect of this Agreement in accordance with clauses 11 or 12 herein; and

(ii) any completion, failure, avoidance, rescission, annulment or other cessation of the effect of this Agreement;

(v) **“Termination Notice”** means the written notice, served by either the Funder or the Plaintiff upon the other in accordance with their rights under this Agreement, seven (7) days in advance of the date upon which either Party elects that the Agreement and all obligations thereunder are to be terminated.

2. General

2.1 The written terms of this Agreement constitute the entire agreement between the Parties.

2.2 There shall be no variation or amendment to the terms of this Agreement except in writing signed by each Party. Notwithstanding the foregoing, a change of the representative plaintiff in the Proceeding, as approved by a court, in and of itself does not require an amendment of this Agreement provided all other terms of the Agreement are adhered to. In the event that there is such a change of the representative plaintiff, the Plaintiff undertakes to assign his rights and responsibilities under this Agreement to the subsequent representative plaintiff. This Agreement will be executed by any subsequent representative plaintiff and will remain in full force and effect.

2.3 If any provision of this Agreement, or the application thereof to any person or circumstances, is or becomes invalid or unenforceable, the remaining provisions shall not be affected and each provision shall be valid and enforceable to the full extent permitted by law.

2.4 The Plaintiff and the Funder will promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or satisfy the provisions of this Agreement and any transaction contemplated by it.

2.5 Nothing in this Agreement shall constitute the Parties as partners, joint venturers or fiduciaries.

2.6 The singular includes the plural and vice versa.

2.7 All references to currencies in this Agreement are to Canadian dollars.

3. Plaintiff's Obligations

3.1 Subject to applicable law, in recognition of the fact that the Funder has an interest in the Resolution Sum and an interest in the efficient and effective prosecution of the Proceeding, the Plaintiff undertakes and agrees to direct the Lawyers to advise the Funder with regard to any significant issue in the Proceeding such as prospects, quantum, proof and any material change thereof. The Plaintiff also undertakes and agrees to direct the Lawyers to promptly respond to any reasonable request by the Funder for information relating to the Proceeding. Notwithstanding the above:

- (a) the Plaintiff shall retain and provide instructions to the Lawyers;
- (b) the Funder accepts that the Lawyers' professional duties are owed to the Plaintiff and not to the Funder; and
- (c) the Plaintiff shall remain as the representative plaintiff in the Proceeding unless the Court orders otherwise.

3.2 The Plaintiff agrees that all information, communication or documents provided to him at any time (i) by the Funder or its respective officers, servants or agents in relation to the Claim and/or this Agreement; or (ii) by the Lawyers in relation to this Agreement is subject to Privilege.

3.3 Other than as ordered by a court, the Plaintiff will not disclose any information, to which clause 3.2 refers, to any other person without the prior written consent of the Funder (if the information was provided by it) or the Lawyers (if the information was provided by them).

3.4 For further clarity, the obligations in clauses 3.2 and 3.3 survive any Termination.

3.5 The Plaintiff undertakes and agrees to authorize and require the Lawyers to:

- (a) immediately, upon its execution, seek court approval of this Agreement;
- (b) immediately report to the Funder the joining or removal of any party to the Proceeding;
- (c) receive any funds payable by the Defendant as a result of any Beneficial Costs Order(s); and
- (d) upon Final Resolution, pay the amounts in clause 8.1 of this Agreement.

4. Funding

4.1 The Funder will pay within 30 days of receipt of a duly completed request for payment by the Lawyers:

- (a) [REDACTED] for disbursements incurred by the Plaintiff in the Proceeding; and
- (b) any Adverse Costs Order in the Proceeding.

- 4.2 If a Beneficial Costs Order is issued, such funds shall be considered as a first credit towards any future Adverse Costs Order(s), such that the Funder, in satisfying its obligations under clause 4.1, shall only pay the remainder of any subsequent Adverse Costs Order after subtraction of the total of the Beneficial Costs Orders issued to date.

5. Privilege and Confidentiality

- 5.1 Information provided to the Funder pursuant to the Agreement is subject to Privilege and, in order to maintain that Privilege, the Funder shall:
- (a) strictly maintain the confidentiality of the information;
 - (b) adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information;
 - (c) ensure that access to the information is only provided to the Funder's directors, officers and/or employees who are engaged in functions connected to the implementation of this Agreement;
 - (d) only use the information for the purpose for which it was provided;
 - (e) not disclose the information to any person other than the Plaintiff and/or the Lawyers retained in the Proceeding; and
 - (f) return all records, copies or duplicates of the information to the Plaintiff upon the Final Resolution of the Proceeding.

6. Appeals

- 6.1 If the Proceeding is wholly or partly unsuccessful, or any appeal from the Proceeding is wholly or partly unsuccessful, and the Lawyers advise that there are reasonable grounds to appeal, or further appeal, as the case may be, the Plaintiff agrees that although the Lawyers may commence and prosecute an appeal or further appeal on the Plaintiff's behalf or for the benefit of the Plaintiff, the Funder is not obliged to provide Funding for any appeal from a final judgment unless it independently decides to do so.
- 6.2 If the Proceeding is wholly or partly successful, or any appeal from the Proceeding is wholly or partly successful and the Defendant lodges an appeal, the Plaintiff agrees that although the Lawyers may defend such appeal or further appeal on the Plaintiff's behalf or for the benefit of the Plaintiff, the Funder is not obliged to provide Funding for any appeal from a final judgment unless it decides independently to do so.
- 6.3 The Funder may elect to fund any appeal or the defence of any appeal or any further appeal or the defence of any further appeal in respect of a final judgment in the Proceeding by notice in writing to the Plaintiff.
- 6.4 If the Funder elects to provide Funding for an appeal pursuant to clause 6.3, such Funding will be on the terms of the Agreement, and the term "Proceeding" wherever used in this Agreement will be treated as including a reference to the appeal which is the subject of the election.

- 6.5 Should the Funder not elect to fund any appeal or the defence of any appeal or any further appeal or the defence of any further appeal in respect of a final judgment in the Proceeding, the Funder shall only be entitled to a Commission in respect of any Resolution reached prior to such appeal not being the judgment appealed from, and shall not be entitled to a Commission in respect of any Resolution reached as a result of such appeal or the defence of such appeal.

7. Receipt of Resolution Sum

7.1 The Plaintiff:

- (a) acknowledges that the conduct of the Proceeding will or may encourage the Defendant to seek to compromise the Plaintiff's Claim(s); and
- (b) undertakes and agrees to authorize and direct the Lawyers to receive any Resolution Sum, paid in compromise for the Plaintiff's Claim(s), and to immediately pay any Resolution Sum into an account kept for that purpose.

- 7.2 The Plaintiff undertakes and agrees to authorize and direct the Lawyers to pay out of the account referred to in clause 7.1(b), above, all payments referred to in clause 8.1.

- 7.3 If the Resolution Sum is not money, the monetary value of the Resolution Sum received will be calculated by reference to the reasonable market value of the Resolution Sum. The Resolution Sum shall then be distributed, and any Commission paid, in proportion to its equivalent monetary value.

8. Commission

- 8.1 Upon Final Resolution, the Plaintiff undertakes and agrees to direct the Lawyers, or administrator as the case may be, to pay (i) the Funder an amount equal to the amount the Funder paid for disbursements in this Proceeding as provided for in clause 4.1 from the Resolution Sum; and (ii) the Commission to the Funder from the Net Resolution Sum, as soon as practicable, and in any event prior to the distribution of the Net Resolution Sum to Class Members.

- 8.2 No fees, commissions or other payments will become due or owing by the Plaintiff to the Funder, other than those provided for in clause 8.1.

9. No Charge or Other Encumbrance

- 9.1 The Plaintiff warrants that there is no charge or other encumbrance on the Net Resolution Sum as at the date of this Agreement.

- 9.2 The Plaintiff will not cause or permit any charge, lien or other encumbrance to arise over or otherwise attach to the Net Resolution Sum after the date of this Agreement, except with the prior written consent of the Funder.

10. Good Faith Dealings

- 10.1 The Plaintiff and the Funder will:

- (a) act in good faith toward each other and be just and faithful in their dealings

with each other in all matters arising out of or connected with this Agreement;
and

- (b) save as provided in this Agreement, not do or permit to be done anything likely to deprive any Party of the benefit for which the Party entered into this Agreement.

- 10.2 If this Agreement or any part thereof is annulled, avoided or held unenforceable the Plaintiff will forthwith do all things necessary, to the extent permitted by law, including without limitation executing any further or other agreement or instrument, to ensure that the Funder receives any remuneration, entitlement or other benefit to which this Agreement refers or is contemplated by this Agreement. The Plaintiff irrevocably agrees that production of a copy of this Agreement shall be conclusive evidence of the Plaintiff's undertaking as set out in this clause.
- 10.3 The Plaintiff will not seek any order from any court that may detrimentally affect the Funder's rights under this Agreement other than with the consent of the Funder.
- 10.4 If the Plaintiff acts in breach of this Agreement, clauses 7 and 8 will continue to apply to any Resolution Sum received by the Plaintiff in respect of the Claim, unless the Funder elects to terminate this Agreement pursuant to clause 11.1, below.
- 10.5 The Plaintiff and the Funder will keep the contents of this Agreement confidential in so far as it concerns the terms of the relationship between the Plaintiff and the Funder, except where disclosure is required by law or disclosure is, in the Funder's absolute discretion, made by the Funder to the Defendant or their agents.

11. Termination by the Funder

- 11.1 If the Plaintiff:
 - (a) does not fulfill his obligations as stipulated in clause 3 above and does not remedy the breach within thirty (30) days after receiving written notice from the Funder; or
 - (b) appoints different Lawyers to replace the present Lawyers;

the Funder may elect to terminate this Agreement by serving a Termination Notice upon the Plaintiff. Termination shall become effective as of the seventh day after service of the Termination Notice.

- 11.2 If the Funder does not elect to fund any appeal of a final judgment or the defence of any appeal of a final judgment in respect of the Proceeding, the Funder shall terminate this Agreement by serving a Termination Notice upon the Plaintiff. Termination shall become effective as of the seventh day after service of the Termination Notice.
- 11.3 All obligations of the Funder under this Agreement cease on the date the Termination becomes effective, save for obligations accrued to that date.
- 11.4 If the Funder terminates this Agreement and its obligations pursuant to clause 11.1 above then it shall not be entitled to a Commission on account of any Resolution achieved after the Termination becomes effective.

- 11.5 If the Funder terminates this Agreement and its obligations pursuant to clause 11.2 above then it shall only be entitled to a Commission in respect of any Resolution reached prior to such appeal and shall not be entitled to a Commission in respect of any Resolution reached as a result of such appeal or the defence of such appeal.
- 11.6 The accrued obligations of the Funder referred to in clause 11.3 comprise of an obligation to pay:
- (a) any Adverse Costs Order in the Proceeding in respect of costs which arise in, or are attributed to, the period beginning on the Date of Commencement and ending on the date the Funder's termination becomes effective; and
 - (b) any disbursements for which a duly completed request for payment has been made during the period beginning on the Date of Commencement and ending on the date the Funder's termination becomes effective.

12. Termination by Plaintiff

- 12.1 If the Funder does not fulfill its obligations as stipulated in clauses 4 and 5, and does not remedy the breach within thirty (30) days after receiving written notice from the Plaintiff, the Plaintiff may terminate this Agreement by serving a Termination Notice upon the Funder. Termination shall become effective as of the seventh day after service of the Termination Notice.
- 12.2 If this Agreement is terminated by the Plaintiff pursuant to clause 12.1 above then:
- (a) the Funder remains liable for the obligations referred to in clause 11.3 above, including, without limitation under clauses 4 (including any Adverse Costs Orders made prior to the effective date of termination) and 5; and
 - (b) the Plaintiff will not be required to make any payment to the Funder under clause 8 above.

13. Governing Law

- 13.1 All matters related to this Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without regard to the conflict of laws or principles thereof, and are subject to the exclusive jurisdiction and venue of the courts of Canada in the Province of Ontario.
- 13.2 For the purpose of all legal proceedings, this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario shall have jurisdiction over any action arising under this Agreement. Specifically, by executing this Agreement, the Funder hereby attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

14. Disputes Arising from this Agreement

- 14.1 Disputes arising from this Agreement shall be determined upon a motion before the Court on notice to the Parties to this Agreement.

15. Notices

- 15.1 All notices given under this Agreement shall be in writing and may be served personally, by post, facsimile or by e-mail.
- 15.2 The Funder shall serve on the Lawyers a copy of any Termination Notice given or received by the Funder.
- 15.3 The Plaintiff shall serve on the Lawyers a copy of any Termination Notice given or received by the Plaintiff.
- 15.4 The address for service of the Funder will be:

Hamilton House, 28 Fitzwilliam Place,
Dublin 2, D02 P283, Ireland
Tel: +353 (0) 1 775 9506
Fax: +353 (0) 1 661 0660
Email: omclaren@claimsfundingeuropa.eu

- 15.5 The addresses for service of the Plaintiff will be:

Attn: Anthony O'Brien
Siskinds LLP
302-100 Lombard Street
Toronto, ON M5C 1M3
Tel: 416.594.4394
Fax: 416.594.4395
Email: anthony.obrien@siskinds.com

Attn: Paul Bates
Bates Barristers P.C.
302-100 Lombard Street
Toronto, ON M5C 1M3
Tel: 416.869.9898
Fax: 416.362.2610
Email: pbates@batesbarristers.com

- 15.6 The address for service of the Lawyers shall be the same as the address for service of the Plaintiff as specified in clause 15.5, above.
- 15.7 Notices shall be deemed to be received on the day after they are posted and the day they are transmitted by facsimile or e-mail.

16. Computation of Time

- 16.1 In the computation of time in this Agreement, except where a contrary intention appears, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days.
- 16.2 Only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

17. Counterparts

- 17.1 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.
- 17.2 A facsimile transmission of this Agreement signed by any Party will be treated as an original.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused this Agreement to be executed by their duly authorized counsel, dated as of MARCH 29, 2019.

SIGNED, SEALED AND DELIVERED)
in the presence of)

Jamie Stenzler)
Witness)

MELYN O'BRIEN GANNESY)
Witness)

Mary O'Shea)

[Signature])
Gary Stenzler)

[Signature])
Claims Funding International, PLC)

[Signature]

This is Exhibit "I" mentioned and referred to in the Affidavit of Charles M. Wright AFFIRMED/SWORN BEFORE ME remotely in accordance with O. Reg. 431/20, this 28th day of November, 2024. The affiant was located in the City of La Quinta, in the State of California, in the United States of America, and the commissioner, Donna Lynn McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario, for
Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

Statement of Account

Proceeding: STENZLER VS TD ASSET MANAGEMENT INC. (CV-18-595380-00CP)
Account: 555766

Period Start: July 15, 2019
Period End: October 31, 2024

Date	Description	Amount	Balance
	Opening Balance		0.00
Jul 15, 2019	CLAIMS FUNDING INTERNATIONAL ORIGINAL CASH CIBC DEPOSIT-1190704 RECEIPT NO.:00700001	75,000.00	75,000.00
Jul 31, 2019	INTEREST FROM TRUST AT 2.3500 %	134.96	75,134.96
Jul 31, 2019	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(37.56)	75,097.40
Jul 31, 2019	HST - COMPENSATION	(4.88)	75,092.52
Aug 30, 2019	INTEREST FROM TRUST AT 2.3500 %	149.73	75,242.25
Aug 30, 2019	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(37.62)	75,204.63
Aug 30, 2019	HST - COMPENSATION	(4.89)	75,199.74
Sep 30, 2019	INTEREST FROM TRUST AT 2.3500 %	145.20	75,344.94
Sep 30, 2019	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(37.67)	75,307.27
Sep 30, 2019	HST - COMPENSATION	(4.89)	75,302.38
Oct 31, 2019	INTEREST FROM TRUST AT 2.3500 %	150.04	75,452.42
Oct 31, 2019	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(37.72)	75,414.70
Oct 31, 2019	HST - COMPENSATION	(4.90)	75,409.80
Nov 29, 2019	INTEREST FROM TRUST AT 2.3500 %	145.50	75,555.30
Nov 29, 2019	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(37.77)	75,517.53
Nov 29, 2019	HST - COMPENSATION	(4.91)	75,512.62
Dec 31, 2019	INTEREST FROM TRUST AT 2.2500 %	144.15	75,656.77
Dec 31, 2019	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(37.82)	75,618.95
Dec 31, 2019	HST - COMPENSATION	(4.91)	75,614.04
Jan 31, 2020	INTEREST FROM TRUST AT 2.2500 %	143.84	75,757.88
Jan 31, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(37.87)	75,720.01
Jan 31, 2020	HST - COMPENSATION	(4.92)	75,715.09
Feb 28, 2020	INTEREST FROM TRUST AT 2.2500 %	134.85	75,849.94
Feb 28, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(37.92)	75,812.02
Feb 28, 2020	HST - COMPENSATION	(4.92)	75,807.10
Mar 31, 2020	INTEREST FROM TRUST AT 2.2500 %	144.15	75,951.25
Mar 31, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(37.97)	75,913.28
Mar 31, 2020	HST - COMPENSATION	(4.93)	75,908.35
Apr 30, 2020	INTEREST FROM TRUST AT 2.2500 %	139.80	76,048.15
Apr 30, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(38.02)	76,010.13
Apr 30, 2020	HST - COMPENSATION	(4.94)	76,005.19
May 29, 2020	INTEREST FROM TRUST AT 2.2500 %	144.77	76,149.96
May 29, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(38.07)	76,111.89
May 29, 2020	HST - COMPENSATION	(4.94)	76,106.95
Jun 30, 2020	INTEREST FROM TRUST AT 2.1000 %	130.80	76,237.75
Jun 30, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(38.11)	76,199.64
Jun 30, 2020	HST - COMPENSATION	(4.95)	76,194.69
Jul 31, 2020	INTEREST FROM TRUST AT 2.1000 %	135.47	76,330.16
Jul 31, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(38.16)	76,292.00
Jul 31, 2020	HST - COMPENSATION	(4.96)	76,287.04
Aug 31, 2020	INTEREST FROM TRUST AT 2.1000 %	135.47	76,422.51
Aug 31, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(38.21)	76,384.30

Statement of Account

Proceeding: STENZLER VS TD ASSET MANAGEMENT INC. (CV-18-595380-00CP)
Account: 555766

Aug 31, 2020	HST - COMPENSATION	(4.96)	76,379.34
Sep 30, 2020	INTEREST FROM TRUST AT 2.1000 %	131.40	76,510.74
Sep 30, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(38.25)	76,472.49
Sep 30, 2020	HST - COMPENSATION	(4.97)	76,467.52
Oct 21, 2020	CLAIMS FUNDING INTERNATIONAL ORIGINAL CASH CIBC DEPOSIT-1201020 RECEIPT NO.:00700001	325,000.00	401,467.52
Oct 30, 2020	INTEREST FROM TRUST AT 1.8500 %	316.58	401,784.10
Oct 30, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(200.89)	401,583.21
Oct 30, 2020	HST - COMPENSATION	(26.11)	401,557.10
Nov 30, 2020	INTEREST FROM TRUST AT 1.8500 %	608.40	402,165.50
Nov 30, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(201.08)	401,964.42
Nov 30, 2020	HST - COMPENSATION	(26.14)	401,938.28
Dec 31, 2020	INTEREST FROM TRUST AT 1.8500 %	629.30	402,567.58
Dec 31, 2020	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(201.28)	402,366.30
Dec 31, 2020	HST - COMPENSATION	(26.16)	402,340.14
Jan 29, 2021	INTEREST FROM TRUST AT 1.8500 %	631.16	402,971.30
Jan 29, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(201.48)	402,769.82
Jan 29, 2021	HST - COMPENSATION	(26.19)	402,743.63
Feb 26, 2021	INTEREST FROM TRUST AT 1.8500 %	570.64	403,314.27
Feb 26, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(201.65)	403,112.62
Feb 26, 2021	HST - COMPENSATION	(26.21)	403,086.41
Mar 31, 2021	INTEREST FROM TRUST AT 1.7500 %	598.61	403,685.02
Mar 31, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(201.84)	403,483.18
Mar 31, 2021	HST - COMPENSATION	(26.23)	403,456.95
Apr 30, 2021	INTEREST FROM TRUST AT 1.7500 %	579.90	404,036.85
Apr 30, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(202.01)	403,834.84
Apr 30, 2021	HST - COMPENSATION	(26.26)	403,808.58
May 31, 2021	INTEREST FROM TRUST AT 1.7500 %	599.54	404,408.12
May 31, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(202.20)	404,205.92
May 31, 2021	HST - COMPENSATION	(26.28)	404,179.64
Jun 30, 2021	INTEREST FROM TRUST AT 1.9000 %	630.60	404,810.24
Jun 30, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(202.40)	404,607.84
Jun 30, 2021	HST - COMPENSATION	(26.31)	404,581.53
Jul 30, 2021	INTEREST FROM TRUST AT 1.9000 %	652.24	405,233.77
Jul 30, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(202.61)	405,031.16
Jul 30, 2021	HST - COMPENSATION	(26.33)	405,004.83
Aug 31, 2021	INTEREST FROM TRUST AT 1.9000 %	652.86	405,657.69
Aug 31, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(202.82)	405,454.87
Aug 31, 2021	HST - COMPENSATION	(26.36)	405,428.51
Sep 30, 2021	INTEREST FROM TRUST AT 1.9000 %	632.40	406,060.91
Sep 30, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(203.03)	405,857.88
Sep 30, 2021	HST - COMPENSATION	(26.39)	405,831.49
Oct 29, 2021	INTEREST FROM TRUST AT 1.9000 %	654.10	406,485.59
Oct 29, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(203.24)	406,282.35
Oct 29, 2021	HST - COMPENSATION	(26.42)	406,255.93
Nov 30, 2021	INTEREST FROM TRUST AT 1.9000 %	633.90	406,889.83
Nov 30, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(203.44)	406,686.39
Nov 30, 2021	HST - COMPENSATION	(26.44)	406,659.95
Dec 31, 2021	INTEREST FROM TRUST AT 1.9000 %	655.65	407,315.60

Statement of Account**Proceeding: STENZLER VS TD ASSET MANAGEMENT INC. (CV-18-595380-00CP)****Account: 555766**

Dec 31, 2021	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(203.65)	407,111.95
Dec 31, 2021	HST - COMPENSATION	(26.47)	407,085.48
Jan 31, 2022	INTEREST FROM TRUST AT 1.9000 %	656.27	407,741.75
Jan 31, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(203.87)	407,537.88
Jan 31, 2022	HST - COMPENSATION	(26.50)	407,511.38
Feb 28, 2022	INTEREST FROM TRUST AT 1.9000 %	593.32	408,104.70
Feb 28, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(204.05)	407,900.65
Feb 28, 2022	HST - COMPENSATION	(26.52)	407,874.13
Mar 31, 2022	INTEREST FROM TRUST AT 1.9000 %	657.51	408,531.64
Mar 31, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(204.26)	408,327.38
Mar 31, 2022	HST - COMPENSATION	(26.55)	408,300.83
Apr 29, 2022	INTEREST FROM TRUST AT 1.9000 %	636.90	408,937.73
Apr 29, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(204.46)	408,733.27
Apr 29, 2022	HST - COMPENSATION	(26.57)	408,706.70
May 31, 2022	INTEREST FROM TRUST AT 1.9000 %	658.75	409,365.45
May 31, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(204.68)	409,160.77
May 31, 2022	HST - COMPENSATION	(26.60)	409,134.17
Jun 30, 2022	INTEREST FROM TRUST AT 2.0000 %	671.40	409,805.57
Jun 30, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(204.90)	409,600.67
Jun 30, 2022	HST - COMPENSATION	(26.63)	409,574.04
Jul 29, 2022	INTEREST FROM TRUST AT 2.0000 %	694.40	410,268.44
Jul 29, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(205.13)	410,063.31
Jul 29, 2022	HST - COMPENSATION	(26.66)	410,036.65
Aug 31, 2022	INTEREST FROM TRUST AT 2.2500 %	783.06	410,819.71
Aug 31, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(205.40)	410,614.31
Aug 31, 2022	HST - COMPENSATION	(26.70)	410,587.61
Sep 30, 2022	INTEREST FROM TRUST AT 2.2500 %	758.70	411,346.31
Sep 30, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(205.67)	411,140.64
Sep 30, 2022	HST - COMPENSATION	(26.73)	411,113.91
Oct 31, 2022	INTEREST FROM TRUST AT 2.5000 %	871.72	411,985.63
Oct 31, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(205.99)	411,779.64
Oct 31, 2022	HST - COMPENSATION	(26.77)	411,752.87
Nov 30, 2022	INTEREST FROM TRUST AT 2.5000 %	844.80	412,597.67
Nov 30, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(206.29)	412,391.38
Nov 30, 2022	HST - COMPENSATION	(26.81)	412,364.57
Dec 30, 2022	INTEREST FROM TRUST AT 3.0000 %	1,049.66	413,414.23
Dec 30, 2022	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(206.70)	413,207.53
Dec 30, 2022	HST - COMPENSATION	(26.87)	413,180.66
Jan 31, 2023	INTEREST FROM TRUST AT 3.4000 %	1,192.57	414,373.23
Jan 31, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(207.18)	414,166.05
Jan 31, 2023	HST - COMPENSATION	(26.93)	414,139.12
Feb 28, 2023	INTEREST FROM TRUST AT 3.4000 %	1,079.68	415,218.80
Feb 28, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(207.60)	415,011.20
Feb 28, 2023	HST - COMPENSATION	(26.98)	414,984.22
Mar 31, 2023	INTEREST FROM TRUST AT 3.2500 %	1,144.83	416,129.05
Mar 31, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(208.06)	415,920.99
Mar 31, 2023	HST - COMPENSATION	(27.04)	415,893.95
Apr 28, 2023	INTEREST FROM TRUST AT 3.2500 %	1,110.30	417,004.25
Apr 28, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(208.50)	416,795.75
Apr 28, 2023	HST - COMPENSATION	(27.10)	416,768.65

Statement of Account

Proceeding: STENZLER VS TD ASSET MANAGEMENT INC. (CV-18-595380-00CP)
Account: 555766

May 31, 2023	INTEREST FROM TRUST AT 3.2500 %	1,149.79	417,918.44
May 31, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(208.95)	417,709.49
May 31, 2023	HST - COMPENSATION	(27.16)	417,682.33
Jun 30, 2023	INTEREST FROM TRUST AT 3.0000 %	1,028.70	418,711.03
Jun 30, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(209.35)	418,501.68
Jun 30, 2023	HST - COMPENSATION	(27.21)	418,474.47
Jul 31, 2023	INTEREST FROM TRUST AT 3.0000 %	1,065.16	419,539.63
Jul 31, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(209.76)	419,329.87
Jul 31, 2023	HST - COMPENSATION	(27.26)	419,302.61
Aug 31, 2023	INTEREST FROM TRUST AT 3.0000 %	1,067.02	420,369.63
Aug 31, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(210.18)	420,159.45
Aug 31, 2023	HST - COMPENSATION	(27.32)	420,132.13
Sep 29, 2023	INTEREST FROM TRUST AT 3.0000 %	1,034.70	421,166.83
Sep 29, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(210.58)	420,956.25
Sep 29, 2023	HST - COMPENSATION	(27.37)	420,928.88
Oct 31, 2023	INTEREST FROM TRUST AT 3.3500 %	1,196.60	422,125.48
Oct 31, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(211.06)	421,914.42
Oct 31, 2023	HST - COMPENSATION	(27.43)	421,886.99
Nov 30, 2023	INTEREST FROM TRUST AT 3.3500 %	1,160.70	423,047.69
Nov 30, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(211.52)	422,836.17
Nov 30, 2023	HST - COMPENSATION	(27.49)	422,808.68
Dec 29, 2023	INTEREST FROM TRUST AT 3.3500 %	1,201.87	424,010.55
Dec 29, 2023	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(212.00)	423,798.55
Dec 29, 2023	HST - COMPENSATION	(27.56)	423,770.99
Jan 31, 2024	INTEREST FROM TRUST AT 3.3500 %	1,202.18	424,973.17
Jan 31, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(212.48)	424,760.69
Jan 31, 2024	HST - COMPENSATION	(27.62)	424,733.07
Feb 29, 2024	INTEREST FROM TRUST AT 3.4500 %	1,160.29	425,893.36
Feb 29, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(212.94)	425,680.42
Feb 29, 2024	HST - COMPENSATION	(27.68)	425,652.74
Mar 28, 2024	INTEREST FROM TRUST AT 3.4500 %	1,243.10	426,895.84
Mar 28, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(213.44)	426,682.40
Mar 28, 2024	HST - COMPENSATION	(27.74)	426,654.66
Apr 30, 2024	INTEREST FROM TRUST AT 3.4500 %	1,205.70	427,860.36
Apr 30, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(213.93)	427,646.43
Apr 30, 2024	HST - COMPENSATION	(27.81)	427,618.62
May 31, 2024	INTEREST FROM TRUST AT 3.4500 %	1,248.68	428,867.30
May 31, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(214.43)	428,652.87
May 31, 2024	HST - COMPENSATION	(27.87)	428,625.00
Jun 28, 2024	INTEREST FROM TRUST AT 3.4500 %	1,211.40	429,836.40
Jun 28, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(214.91)	429,621.49
Jun 28, 2024	HST - COMPENSATION	(27.93)	429,593.56
Jul 31, 2024	INTEREST FROM TRUST AT 3.4500 %	1,254.57	430,848.13
Jul 31, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(215.42)	430,632.71
Jul 31, 2024	HST - COMPENSATION	(28.00)	430,604.71
Aug 30, 2024	INTEREST FROM TRUST AT 3.4500 %	1,257.36	431,862.07
Aug 30, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(215.93)	431,646.14
Aug 30, 2024	HST - COMPENSATION	(28.07)	431,618.07
Sep 27, 2024	INTEREST FROM TRUST AT 3.4500 %	1,219.80	432,837.87
Sep 27, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(216.41)	432,621.46

Statement of Account

Proceeding: STENZLER VS TD ASSET MANAGEMENT INC. (CV-18-595380-00CP)
Account: 555766

Sep 27, 2024	HST - COMPENSATION	(28.13)	432,593.33
Oct 31, 2024	INTEREST FROM TRUST AT 3.4500 %	1,263.25	433,856.58
Oct 31, 2024	ANNUAL MANAGEMENT COMPENSATION AT 0.60%	(216.92)	433,639.66
Oct 31, 2024	HST - COMPENSATION	(28.19)	433,611.47

Closing Balance	433,611.47
------------------------	-------------------

E. & O. E.
 November 12, 2024
 /

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF CHARLES M. WRIGHT
(Affirmed November 28, 2024)

Siskinds LLP

Barristers & Solicitors
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Fax: 416.362.2610

Lawyers for the Plaintiff

TAB 6

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF CHARLES M. WRIGHT
(Affirmed September 16, 2024)**

I, Charles M. Wright, of the City of London, in the Province of Ontario, AFFIRM:

1. I am a partner at the law firm of Siskinds LLP (“**Siskinds**”). Siskinds is counsel for the Plaintiff in this action (“**Action**”), and as such I have personal knowledge of the facts and matters deposed to in this affidavit. Where facts are not within my personal knowledge, I have stated the source of the information upon which my statements are based, and I believe the information to be true.
2. In making this affidavit, it is not my intention to waive solicitor-client privilege, litigation privilege or any other privilege of any kind.
3. Where I use the term “we” and its derivatives in this affidavit, I am referring, collectively, to the members of the Siskinds team with carriage of this matter.
4. Unless otherwise stated or the context otherwise indicates, capitalized terms used in this affidavit have the meanings assigned to them in the Settlement Agreement between the

Plaintiff and the Defendant dated September 11, 2024 (“**Settlement Agreement**”), which is attached as Schedule 1 to the First Order, which in turn is attached as Schedule A to the Notice of Motion.

NATURE OF THE MOTION

5. A settlement has been reached between the Plaintiff and Defendant in this Action. I make this affidavit in support of the Plaintiff’s motion for orders, among others:
- (a) amending the class definition for settlement purposes;
 - (b) approving the form and content, and method for disseminating, First Notice;
 - (c) approving the supplemental opt-out procedure for those Class Members who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (“**Eligible Supplemental Opt-Out Parties**”); and
 - (d) approving the procedure for Class Members to file objections to, or comments on, the Settlement Agreement, the Distribution Protocol, or the request for Class Counsel Fees and Class Counsel Disbursements.

BACKGROUND

The Action

6. On April 6, 2018, this Action was initiated by Statement of Claim. The current iteration of the Plaintiff’s Statement of Claim is the Third Fresh as Amended Statement of Claim filed on February 17, 2021. Attached hereto as **Exhibit “A”** is a copy of the Third Fresh as Amended Statement of Claim.

7. The Plaintiff and Class Members are unitholders of the TD Mutual Funds, which are structured as trusts. They held their TD Mutual Fund units through Discount Brokers. A Discount Broker provides “order execution only services” as defined in Rule 3200 of the IIROC Dealer Member Rules.¹ They are often referred to as “DIY” or “online” brokers. Discount Brokers are prohibited from providing investment recommendations and advice.
8. The Defendant, TD Asset Management Inc. (“**TDAM**”), is the trustee and manager of the TD Mutual Funds.
9. The Plaintiff alleges that the Defendant improperly paid trailing commissions to Discount Brokers on the Plaintiff and Class Members’ behalf for services and advice that were never provided. The Plaintiff asserts that the Defendant’s improper payment of trailing commissions to Discount Brokers was, *inter alia*, a breach of trust and fiduciary duty. He also asserts claims under section 130 of the *Securities Act* for misrepresentations in the Defendant’s Fund Fact Documents.
10. The Plaintiff seeks to recover the trailing commissions he alleges were improperly paid, along with any investment returns or interest flowing from the payment of those trailing commissions.
11. The Defendant denied and continues to deny these allegations.

The Certification Motion

12. On September 6, 2018, the original Plaintiff, Gary Stenzler, delivered his notice of motion for certification of this Action as a class proceeding on behalf of the Class Members. In

¹ The IIROC Dealer Member Rules have been replaced by the Canadian Investment Regulatory Organization’s “Corporation Investment Dealer and Partially Consolidated Rules”. “Order execution only account” is defined in Rule 1201 of the “Corporation Investment Dealer and Partially Consolidated Rules”.

support of the motion, Mr. Stenzler swore and delivered his own affidavit, which included hundreds of pages of documents obtained from the Defendant's records and various public sources.

13. The Defendant delivered responding materials, including an affidavit from Huck Oon attaching certain of the Defendant's disclosure documents.
14. On July 26, 2019, the Plaintiff delivered further materials in reply, including an affidavit from Ermanno Pascutto, the former Executive Director and Head of Staff of the Ontario Securities Commission, on the regulatory history of the payment of trailing commissions to Discount Brokers.
15. Cross-examinations were held on the affidavits of Mr. Oon, Mr. Stenzler and Mr. Pascutto.
16. The parties also exchanged lengthy written submissions in advance of the certification hearing.
17. The certification motion was heard on January 10, 2020. By Order dated February 27, 2020, the Honourable Justice Belobaba certified the action as a class proceeding ("**Certification Order**"). Attached hereto as **Exhibit "B"** is a copy of the Certification Order.
18. On March 13, 2020, the Defendant delivered a notice of motion for leave to appeal the Certification Order.
19. On October 2, 2020, the Divisional Court dismissed the Defendant's motion for leave to appeal.
20. In accordance with an Order of Justice Belobaba dated December 14, 2021, notice of certification was disseminated and the period for Class Members to opt out of this Action

expired as of April 8, 2022. Attached hereto as **Exhibit “C”** is a copy of the Order dated December 14, 2021.

Mr. Westwood is Substituted as Representative Plaintiff

21. On February 5, 2021, by Order of Justice Belobaba, Peter Westwood was added as the Plaintiff to this Action in substitution for Mr. Stenzler, and he was appointed representative plaintiff for the Class.

Litigation Funding

22. Shortly before the certification motion, Mr. Stenzler filed an uncontested motion for approval of a third-party litigation funding agreement (“**Funding Agreement**”) with Claims Funding International, PLC (“**Funder**”). The Court approved the Funding Agreement by Order dated June 20, 2019. Pursuant to the terms of the Funding Agreement, the Funder posted security with the Accountant of the Superior Court of Justice in the amount of C\$75,000 in July 2019 and an additional C\$325,000 in October 2020.

Discovery

23. In the fall of 2020, the parties commenced the negotiation of a Discovery Plan. A discovery plan was finalized on May 18, 2023. 567 documents were produced by the Defendant on January 8, 2024.
24. Pursuant to the endorsement of Justice Akbarali dated May 23, 2024, a revised schedule was established for production of documents and examinations for discovery. On July 1, 2024, pursuant to the revised schedule, a further 2,161 documents were produced by the Defendant.

Related Litigation

(a) The Aggarwal Action

25. A separate, concurrent settlement has also been reached between the Plaintiff and the Defendant in the related action, *Aggarwal v TD Asset Management Inc.*, Court File No. CV-22-691344-00CP (“**Aggarwal Action**”).
26. The Aggarwal Action was filed on December 7, 2022. It is brought on behalf of investors who held TD Mutual Fund units through a full-service broker or other non-Discount Broker channel. The Aggarwal Action targets the same trailing commission payments as the Action. However, the Aggarwal Action seeks to recover the losses flowing from those trailing commission payments that are alleged to have been suffered by individuals who held TD Mutual Funds outside the Discount Broker channel.
27. Due to the overlap between this Action and the Aggarwal Action, the Plaintiff sought an order to temporarily stay the Aggarwal Action until the resolution of the common issues in this Action, the settlement of claims being asserted in this Action or the Aggarwal Action, or the dismissal, discontinuance or abandonment of this Action.
28. By Order dated August 1, 2023, Justice Akbarali granted the temporary stay.

(b) The Frayce Action

29. On March 27, 2020, a related proposed class action was filed against TD Waterhouse Canada Inc. (“**TDW**”), styled *Frayce v. BMO Investor Line Inc. et al.*, Court File No. CV-20-638868-CP (“**Frayce Action**”). The Frayce Action seeks recovery from Discount Brokers for trailing commissions paid to them. One of the defendants in the Frayce Action, TDW, is a related corporate entity to the Defendant in this Action.

30. On January 20, 2023, Justice Belobaba dismissed the plaintiffs' motion for certification in the Frayce Action.
31. On January 24, 2024, the Divisional Court dismissed the plaintiffs' appeal from the denial of certification.

EVENTS LEADING TO THE SETTLEMENT AGREEMENT

32. After the certification motion was finally determined, the Plaintiff and Defendant commenced a process to explore the resolution of the litigation.
33. To facilitate settlement discussions, the Defendant agreed to gather and produce data related to the quantum of trailing commissions paid by the Defendant to Discount Brokers. That was a lengthy process. We received trailing commission data from the Defendant in tranches between January and August 2022.
34. Joel Wiesenfeld was engaged to mediate. Mr. Wiesenfeld is a highly experienced mediator. His experience and expertise as a mediator in class actions has been judicially recognized.² Before becoming a mediator, Mr. Wiesenfeld practiced as securities regulatory counsel for 31 years, concluding his career as a partner at Torys LLP in 2012. During that time, he was repeatedly recognized as one of the top securities litigation practitioners in Canada, including among others as a leading practitioner in securities litigation by Lexpert/American Lawyer's Guide to the Leading 500 lawyers in Canada 2007, 2009, 2010, 2011 and 2012. Mr. Wiesenfeld was the co-founder and co-chair of The Advocates' Society's Securities Litigation Practice Group and is an editorial board member of The Canadian Securities Law Reporter. Since leaving private practice Mr. Wiesenfeld has

² See e.g. *Haase v Reliq Health Technologies Inc*, 2022 BCSC 1754 at para 21; *Majestic Asset Management c Banque Toronto-Dominion*, 2024 QCCS 225 at para 37; *Berg v Canadian Hockey League*, 2024 ONSC 1573 at para 24.

successfully provided mediation services on securities related matters, including helping successfully mediate the resolution of securities class actions.

35. The discussions to resolve the Action were made significantly more complex by the existence of the Aggarwal Action against TDAM and the Frayce Action against TDW. The three actions overlap with each other in different ways and to differing degrees, including as to the identity of the defendant, the class members, the causes of action, and the damages.
36. The formal mediations and other settlement discussions described below involved Siskinds and, at different points in time, one or more of counsel for TDAM, counsel for TDW, counsel for Mr. Frayce, and counsel for Mr. Aggarwal.
37. The Plaintiff and TDAM held the first mediation on November 7, 2022. In advance of the mediation, the parties exchanged lengthy mediation briefs, which included expert opinions on damages. The parties were unsuccessful at arriving at a resolution at the mediation on November 7, 2022. However, progress was made and negotiations continued.
38. The continuing negotiations included formal mediation sessions with Mr. Wiesenfeld on May 3, 2023, May 30, 2023, and September 14, 2023. We also had regular discussions on an ongoing basis with counsel for each of TDAM, counsel for Mr. Frayce, and counsel for Mr. Aggarwal.
39. These mediations and discussions addressed both the settlement sum (or sums) to be paid, and the allocation of the settlement sum (or sums) between the respective classes in this Action and the Aggarwal Action (and in some cases, also the Frayce Action).
40. Following hard-fought, arm's-length negotiations over a lengthy period of time, Mr. Westwood and the Defendant and Mr. Aggarwal and the Defendant were able to reach

agreements in principle, which together provide for a global settlement of the claims against the Defendant in both this Action and the Aggarwal Action.

41. The terms of the settlement between the Plaintiff and the Defendant are memorialized in the Settlement Agreement, as discussed further below. The terms of the settlement between Mr. Aggarwal and the Defendant are memorialized in a separate agreement.

THE SETTLEMENT AGREEMENT

42. Pursuant to the terms of the Settlement Agreement, the Defendant has agreed to pay C\$70,250,000 to resolve the Action, without admission of liability. A compensation fund will be established and administered by a professional administrator to pay claims from Class Members pursuant to a scheme to be established in the Distribution Protocol. The Settlement Amount includes all legal fees, disbursements, taxes and administration expenses.
43. The Settlement Agreement is subject to approval by this Court. If the Settlement Agreement is approved, the claims of all Class Members asserted or that could have been asserted in the Action will be fully and finally released, and the Action will be dismissed. The settlement is not an admission of liability, wrongdoing or fault on the part of the Defendant, who continues to deny the allegations against it.
44. The Settlement Agreement sets out a comprehensive scheme for implementing the settlement. Under the terms of the Settlement Agreement, the Plaintiff will first seek approval of an amendment to the class definition, an objection procedure, the form and manner of dissemination of the First Notice, and a supplemental opt-out procedure. If this Court grants the orders sought, then notice will be published. The form of notice is attached

to the Settlement Agreement. The Settlement Agreement also establishes a process for Class Members to object.

45. Following the publication of notice, a second hearing will be held seeking approval of the Settlement Agreement, the Distribution Protocol for purposes of distributing the Net Settlement Amount, and the form and manner of dissemination of the Second Notice.
46. At the second hearing, approval of fees, disbursements and taxes, an interim commission for the Funder and an honorarium to the Plaintiff will also be sought. Approval of the Settlement Agreement is not dependent on approval of Siskinds' fees and disbursements, the honorarium or the Distribution Protocol.

FIRST NOTICE

47. The Plan of Notice provides for notice to be provided in two-stages. Approval of the first stage of the Plan of Notice ("**First Notice**") is being sought on this motion. The parties have agreed on the form and content of the versions of the First Notice. The short-form, long-form, and internet banner versions of First Notice and the Plan of Notice are attached as Exhibits 2, 3, 4 and 5, respectively, to the First Order, which is attached to the Notice of Motion for this motion.
48. The First Notice provides notice of:
 - (a) the Settlement Agreement;
 - (b) the amended class definition for settlement purposes;
 - (c) the proposed Distribution Protocol;
 - (d) the request for Class Counsel Fees and Class Counsel Disbursements;

- (e) the pendency of the settlement approval hearing;
- (f) the right of Eligible Supplemental Opt-Out Parties to opt out of the Action and the procedure for doing so; and
- (g) the right to object to the Settlement Agreement, the Distribution Protocol, or the request for Class Counsel Fees and Class Counsel Disbursements.

49. The First Notice will be disseminated as follows:

- (a) Short-form notice:
 - (i) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (ii) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);
 - (iii) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (iv) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (v) published once in the business section of *La Presse*, in French;
 - (vi) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they distribute the notice through their electronic message systems to the attention of their clients who may be Class Members

and post the notice on their news boards directed to the attention of their clients who may be Class Members; and

(vii) filed by the Defendant as a news release on SEDAR;

(b) Long-form notice:

(i) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French; and

(ii) provided (by email, if possible) by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the Action (in English and French);

(c) Internet banner:

(i) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, for no less than 30 days and no more than 35 days; and

(ii) published as a 12-day sponsored news link on Stockhouse.

50. I am informed by Garrett Hunter and believe that the estimated cost of First Notice is approximately \$26,000, which is reasonable and proportionate in light of the size of the settlement amount and the importance of notifying Class Members of the items referenced at paragraph 48.

51. The contemplated manner of disseminating the First Notice is robust and is consistent with the manner of providing notice in many other similar cases. The method of disseminating First Notice is virtually identical to the method for disseminating notice of certification in this Action, which was approved by Order of Justice Belobaba on December 14, 2021. In

my experience, the combination of direct and indirect methods of providing notice should cause the First Notice to come to the attention of a significant portion of the Class.

52. Approval of the second stage of the Plan of Notice will be sought alongside the motion to approve the Settlement Agreement.
53. Bids will be solicited from experienced class action administrators. The appointment of a claims administrator in the best interests of the Class will be sought alongside the motion to approve the Settlement Agreement.

SUPPLEMENTAL OPT-OUT PROCEDURE

54. In accordance with the Order issued by Justice Belobaba on December 14, 2021, the opt-out period for Class Members under the Certification Order expired on April 8, 2022.
55. The Class includes individuals who held units of a TD Mutual Fund through a Discount Broker for the first time on or after April 9, 2022 (*i.e.* Eligible Supplemental Opt-Out Parties). Their claims accrued after the prior opt-out deadline and therefore could not have exercised their opt-out rights in the prior opt-out process.
56. The Plaintiff proposes that Eligible Supplemental Opt-Out Parties who wish to exclude themselves from the Action must do so by submitting by email, mail or courier a written opt out election (“**Supplemental Opt-Out Form**”) to Class Counsel, to be received or postmarked on or before the date that is sixty (60) days after the day on which the First Notice is first published (“**Supplemental Opt-Out Deadline**”).
57. The proposed Supplemental Opt-Out Form is attached to the proposed long-form First Notice.

OBJECTION PROCEDURE

58. It is proposed that the Court order any Class Member who wishes to file an objection to, or comment, on the Settlement Agreement, Distribution Protocol, or the request for Class Counsel Fees and Class Counsel Disbursements shall deliver a written statement to Siskinds to be received or postmarked on or before the date that is 21 calendar days prior to the settlement approval hearing, which is November 18, 2024 based on the scheduled hearing date for the settlement approval motion of December 9, 2024.

Affirmed remotely by Charles M. Wright of the City of London, in the Province of Ontario, before me at the Town of Whitby, in the Province of Ontario on September 16, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



DocuSigned by:
Donna McElroy

Donna Lynn McElroy, A Commissioner, etc.
Province of Ontario,
for Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

Signed by:
Charles M. Wright

Charles M. Wright

This is Exhibit "A" mentioned and referred to in Affidavit of Charles M. Wright AFFIRMED BEFORE ME remotely in accordance with O. Reg. 431/20, this 16th day of September, 2024. The affiant was located in the City of London, Province of Ontario, and the commissioner, Donna McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, A Commissioner, etc.
Province of Ontario,
for Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

AMENDED THIS FEB. 17, 2021 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

PETER WESTWOOD

RULE/LA RÈGLE 23.02 (C)

Plaintiff

BY THE ORDER OF JUSTICE L. BELOBABA
L'ORDONNANCE DU

- and -

DATE / FAIT LE FEBRUARY 5, 2021

TD ASSET MANAGEMENT INC.

REGISTRAR
SUPERIOR COURT OF JUSTICE
GREFFIER
COUR SUPÉRIEURE DE JUSTICE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**THIRD FRESH AS AMENDED
STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in this statement of claim.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$400.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by

- 2 -

the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date April 6, 2018

Issued by N. Mohammed
Local registrar

Address of court office 393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO TD Asset Management Inc.
66 Wellington Street West
TD Tower, 12th Floor
Toronto, ON M5K 1A2

- 3 -

CLAIM

CURRENCY AND DEFINITIONS

1. Unless otherwise stated, all dollar amounts stated herein are in Canadian dollars.
2. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following definitions apply:
 - (a) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;
 - (b) “**Class**” and “**Class Members**” means all persons, wherever they may reside or be domiciled, who held or hold, at any time prior to the conclusion of the trial of the common issues in this proceeding, units of a **TD Mutual Fund** through a **Discount Broker**, except for the **Excluded Persons**;
 - (c) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
 - (d) “**CSA**” means the Canadian Securities Administrators;
 - (e) “**Current TD Managed Portfolios DOT**” means the Amended, Consolidated and Restated Declarations of Trust, dated as of August 27, 2020 (TD Managed Portfolios), as amended and supplemented from time to time;
 - (f) “**Current TD Mutual Funds DOT**” means the Amended, Consolidated and Restated Declarations of Trust, dated as of September 10, 2020 (TD Mutual Funds), as amended and supplemented from time to time;
 - (g) “**Current TD Mutual Funds Trust Indenture**” means the Amended, Consolidated and Restated Trust Indenture, dated as of July 27, 2020 (TD Mutual Funds), as amended and supplemented from time to time;
 - (h) “**Defendant**” means TD Asset Management Inc.;
 - (i) “**Discount Brokers**” means entities providing “order-execution only services” as defined in Rule 3200 of the **IROC Rules** or entities performing a function similar to “order-execution only services” prior to the introduction of that definition in Rule 3200 of the **IROC Rules**, including (without limitation) **TD Direct Investing**;
 - (j) “**Excluded Persons**” means the **Defendant**; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the **Defendant**; and the past and present members of the independent review committee of each **TD Mutual Fund**;

- 4 -

- (k) “**Form 81-101F1**” means Form 81-101F1 – *Contents of Simplified Prospectus*, as amended;
- (l) “**Form 81-101F2**” means Form 81-101F2 – *Contents of Annual Information Form*, as amended;
- (m) “**Form 81-101F3**” means Form 81-101F3 – *Contents of Fund Facts Document*, as amended;
- (n) “**Fund Facts Document**” means a fund facts document as referred to in **NI 81-101** and **Form 81-101F3**;
- (o) “**IIROC**” means the Investment Industry Regulatory Organization of Canada;
- (p) “**IIROC Rules**” means the **IIROC** Dealer Member Rules, as amended;
- (q) “**NI 81-101**” means National Instrument 81-101 – *Mutual Fund Prospectus Disclosure*, as amended;
- (r) “**NI 81-107**” means National Instrument 81-107 – *Independent Review Committee for Investment Funds*, as amended;
- (s) “**OBCA**” means the *Business Corporations Act*, RSO 1990, c B.16, as amended;
- (t) “**OSA**” means the *Securities Act*, RSO 1990, c S.5, as amended;
- (u) “**Other Canadian Securities Legislation**” means, collectively, the *Securities Act*, RSA 2000, c S-4; the *Securities Act*, RSBC 1996, c 418; *The Securities Act*, CCSM c S50; the *Securities Act*, SNB 2004, c S-5.5; the *Securities Act*, RSNL 1990, c S-13; the *Securities Act*, SNWT 2008, c 10; the *Securities Act*, RSNS 1989, c 418; the *Securities Act*, S Nu 2008, c 12; the *Securities Act*, RSPEI 1988, c S-3.1; the *Securities Act*, RSQ, c V-1.1; *The Securities Act, 1988*, SS 1988-89, c S-42.2; and the *Securities Act*, SY 2007, c 16, all as amended;
- (v) “**Plaintiff**” means Peter Westwood;
- (w) “**Simplified Prospectus**” means a simplified prospectus as referred to in **NI 81-101** and **Form 81-101F1**;
- (x) “**TD Bank**” means The Toronto-Dominion Bank;
- (y) “**TD Direct Investing**” means TD Direct Investing, a division of **TD Waterhouse**, a subsidiary of **TD Bank**, or such other discount brokerage business operated by **TD Bank** from time to time;
- (z) “**TD Mutual Funds**” means all mutual fund trusts (including, without limitation, all series of units thereof) of which the **Defendant** is trustee, was trustee or may be trustee at any time prior to the conclusion of the trial of the common issues in this

- 5 -

proceeding (but only in respect of the period during which the **Defendant** is trustee, was trustee or may be trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been or may be terminated, (ii) those mutual funds that have been or may be merged into other mutual funds, and (iii) those mutual funds that have undergone or may undergo name changes;

- (aa) “**TD Waterhouse**” means TD Waterhouse Canada Inc.;
- (bb) “**Trust Instruments**” means, collectively, all declarations of trust or similar trust instruments that govern, have governed or may govern the **TD Mutual Funds**, including, without limitation, the **Current TD Mutual Funds DOT**, the **Current TD Managed Portfolios DOT** and the **Current TD Mutual Funds Trust Indenture**;
- (cc) “*Trustee Act*” means the *Trustee Act*, RSO 1990, c T.23, as amended; and
- (dd) “**Unearned Management Fees**” means, in respect of management fees that have been paid or may be paid out of the assets of the **TD Mutual Funds**, the portion of those management fees that has been paid or may be paid to **Discount Brokers** as trailing commissions, and any taxes relating to those trailing commissions.

RELIEF SOUGHT

3. The Plaintiff claims on his own behalf and on behalf of the other Class Members:
 - (a) a declaration that the Defendant committed breaches of trust and breached its fiduciary duty to the Plaintiff and the other Class Members by the acts and omissions pleaded herein;
 - (b) a declaration that the Defendant made one or more misrepresentations within the meaning of the *OSA* (and, if necessary, the Other Canadian Securities Legislation), and that the Defendant is liable to the Plaintiff and the other Class Members pursuant to section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation);
 - (c) an order requiring the Defendant to account to the Plaintiff and the other Class Members for the Unearned Management Fees;

- 6 -

- (d) damages and/or equitable compensation in the sum of \$200 million (or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references) to restore the Plaintiff and the other Class Members to the position they would have been in had the Unearned Management Fees not been paid;
- (e) if necessary, an order compelling the Defendant to compensate the Plaintiff and the other Class Members in respect of the Unearned Management Fees by means of litigation trusts to be established pursuant to the *CPA*;
- (f) an order disallowing the payment of the Unearned Management Fees as expenses pursuant to section 23.1 of the *Trustee Act* (and, if necessary, the equivalent provisions of comparable Canadian legislation) and requiring the Defendant to repay the expenses to the Plaintiff and the other Class Members or to the TD Mutual Funds;
- (g) an interim and permanent order prohibiting the Defendant from seeking or obtaining indemnity or reimbursement from the assets of the TD Mutual Funds in respect of monetary relief paid or payable to the Plaintiff and the other Class Members in this action or its costs and expenses of this action;
- (h) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (i) an equitable rate of interest on all sums found due and owing to the Plaintiff and the other Class Members to compensate them for the diminution in the value of their units of the TD Mutual Funds resulting from the payment of the Unearned Management Fees;

- 7 -

- (j) pre-judgment and post-judgment interest pursuant to the *CJA*;
- (k) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity;
- (l) pursuant to section 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (m) such further and other relief as this Honourable Court may deem just.

OVERVIEW

4. This class proceeding arises out of the payment of excessive, inflated and/or unearned management fees to the Defendant in respect of the TD Mutual Funds. The management fees are excessive, inflated and/or unearned because unearned trailing commissions are included in, or embedded into, those management fees.
5. The Defendant is the trustee and manager of the TD Mutual Funds.
6. The Class Members are persons who hold or held units of a TD Mutual Fund through a Discount Broker, as distinct from other distribution channels through which TD Mutual Funds are sold to investors. Discount Brokers are also commonly referred to as “order-execution only”, “DIY” and “online” brokers. Under the IIROC Rules, Discount Brokers are prohibited from providing investment advice to investors.
7. The TD Mutual Funds are trusts governed by the Trust Instruments. The assets of the TD Mutual Funds are trust property that the Defendant, as trustee and a fiduciary, has undertaken to hold for the exclusive benefit of the beneficiaries, being the Class Members and the other unitholders of the TD Mutual Funds. The Defendant has a duty to preserve the trust property and maximize the value of units of the TD Mutual Funds.

- 8 -

8. The Defendant receives management fees out of the assets of the TD Mutual Funds. The management fees are excessive, inflated and/or unearned because a portion — described herein as the Unearned Management Fees — is collected by the Defendant for the purpose of paying trailing commissions to Discount Brokers. The Defendant has paid, and continues to pay, trailing commissions to Discount Brokers through which the Class Members held or hold the TD Mutual Funds.
9. The purpose of a trailing commission on a mutual fund is to compensate the dealer (through whom the mutual fund is sold) for providing its client with ongoing investment advice about the client's investment in the mutual fund in respect of which the trailing commission is paid. As Discount Brokers do not and cannot provide investment advice to investors, the payment of trailing commissions to Discount Brokers in respect of the TD Mutual Funds is improper, unreasonable and unjustified. Consequently, the payment by the Defendant of the Unearned Management Fees on account of those trailing commissions, and their receipt by the Defendant, is improper, unreasonable and unjustified.
10. Since 2011, the Fund Facts Documents that the Defendant has prepared and filed with securities regulators to permit the sale of units of the TD Mutual Funds have acknowledged the purpose of trailing commissions as compensation for advice. Those Fund Facts Documents have stated that trailing commissions are paid to dealers for the “services and advice” provided by those dealers to their clients.
11. The term “services and advice” refers to a dealer providing ongoing advice to a client with respect to the client's investment in the TD Mutual Fund in respect of which the trailing commission is paid, and services that are specifically connected with that advice, namely determining the suitability for the client of the investment in that TD Mutual Fund in light

- 9 -

of the personal circumstances of the client (including the client's other investment holdings). However, Discount Brokers do not and cannot provide investment advice to clients and they do not provide suitability determinations for their clients. Accordingly, the payment of trailing commissions to Discount Brokers in respect of the TD Mutual Funds is improper, unreasonable and unjustified. Consequently, the payment by the Defendant of the Unearned Management Fees on account of those trailing commissions, and their receipt by the Defendant, is improper, unreasonable and unjustified.

12. The reality is that trailing commissions function as sales commissions paid on an ongoing basis by the Defendant to Discount Brokers in consideration for services provided by the Discount Brokers to the Defendant, not services provided by the Discount Brokers to the Class Members. The trailing commissions incentivize the Discount Brokers to offer for sale, or provide "shelf space" for, TD Mutual Funds on their trading platforms. This is to the detriment of the Class Members (who suffer reduced investment returns), while accruing to the benefit of: the Defendant (which receives increased management fees as the assets of the TD Mutual Funds grow through new investment capital); the Defendant's affiliate, TD Direct Investing, and other Discount Brokers (which receive the trailing commissions); and the Defendant's ultimate parent company, TD Bank (which enjoys the benefits flowing to the Defendant and TD Direct Investing). The Defendant misused trust property belonging to the Class Members for the purpose of benefiting itself, its affiliates and others.

- 10 -

13. Further or in the alternative, the payment of trailing commissions to Discount Brokers cannot be justified on the basis of purported “services” because, among other things:
 - (a) the Defendant does not impose an obligation on Discount Brokers to provide particular services to Class Members in respect of the TD Mutual Funds in consideration for the trailing commissions;
 - (b) the Defendant does not conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers are providing particular services to Class Members in respect of the TD Mutual Funds; and
 - (c) the Defendant does not conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers use or apply the trailing commissions for the purpose of providing particular services to Class Members in respect of the TD Mutual Funds.

14. In fact, Discount Brokers do not provide Class Members with any services that are specific to the TD Mutual Funds in respect of which the trailing commissions are paid and that are provided on an ongoing basis. The services provided by Discount Brokers to their clients (such as research and educational tools) are provided regardless of whether the clients hold TD Mutual Funds. Those general services available to all Discount Broker clients do not justify the payment of trailing commissions to Discount Brokers in respect of the TD Mutual Funds. Accordingly, the payment of trailing commissions to Discount Brokers on account of “services” is improper, unreasonable and unjustified. Consequently, the payment by the Defendant of the Unearned Management Fees on account of those trailing commissions, and their receipt by the Defendant, is improper, unreasonable and unjustified.

- 11 -

15. In any event, based on the Defendant's own characterization of the purpose of trailing commissions as being for "services and advice", the full amount of the trailing commissions paid to Discount Brokers is improper, unreasonable and unjustified because the Discount Brokers have not provided "services and advice" to the Class Members. Based on the Defendant's characterization, both services and advice must be provided in consideration for the payment of trailing commissions to Discount Brokers. Discount Brokers do not and cannot provide advice to investors. Accordingly, the payment by the Defendant of the Unearned Management Fees on account of those trailing commissions, and their receipt by the Defendant, is improper, unreasonable and unjustified.
16. The Unearned Management Fees represent significant sums of money and are paid by and to the Defendant on a continuous basis. The wasting of the assets of the TD Mutual Funds by the payment of the Unearned Management Fees has damaged the value of the units of the TD Mutual Funds held by the Class Members. The Class Members have suffered, and continue to suffer, significant loss and damage as a result of the Defendant's acts and omissions pleaded herein.

THE PARTIES

The Plaintiff

17. The Plaintiff is an individual residing in North Vancouver, British Columbia.

- 12 -

18. The Plaintiff has held units of certain series of certain TD Mutual Funds through TD Direct Investing, a Discount Broker, as follows:

- (a) in a joint Direct Trading account with his spouse, the Plaintiff has held:
 - (i) units of TD Canadian Index Fund – e-Series (TDB900C) since before November 2013; and
 - (ii) units of TD U.S. Index Fund – e-Series (TDB902C) since January 9, 2018;
- (b) in an individual RIF account, the Plaintiff has held:
 - (i) units of TD Canadian Index Fund – e-Series (TDB900C) since December 15, 2015 (and prior to December 15, 2015 in the RRSP account that was transferred into this RIF account); and
 - (ii) units of TD U.S. Index Fund – e-Series (TDB902C) since December 15, 2018; and
 - (iii) units of TD Canadian Bond Index Fund – e-Series (TDB909C) from December 15, 2015 to January 6, 2020 (and prior to December 15, 2015 in the RRSP account that was transferred into this RIF account); and
 - (iv) units of TD European Index Fund – e-Series (TDB906C) from December 15, 2015 to April 9, 2019 (and prior to December 15, 2015 in the RRSP account that was transferred into this RIF account); and
- (c) in an individual TFSA account, the Plaintiff has held:
 - (i) units of TD Canadian Index Fund – e-Series (TDB900C) since before December 2013; and

- 13 -

(ii) units of TD U.S. Index Fund – e-Series (TDB902C) since January 22, 2016.

19. In addition, sometime prior to December 2015, the Plaintiff held units of TD Canadian Index Fund – Investor Series and TD Japanese Index Fund – Investor Series through TD Direct Investing. The Plaintiff no longer holds those units.

The Class

20. The Class on whose behalf this proceeding is brought is comprised of all persons, wherever they may reside or be domiciled, who held or hold, at any time prior to the conclusion of the trial of the common issues in this proceeding, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.

The Defendant

21. The Defendant is a corporation incorporated under the *OBCA*.

22. The Defendant's registered office and headquarters are, and were at all material times, located in Toronto, Ontario.

23. The Defendant is, and was at all material times, the trustee and manager of the TD Mutual Funds.

24. The Defendant is a wholly-owned subsidiary of TD Bank.

25. The Defendant is, and was at all material times, an "investment fund manager" as defined in the *OSA*. As an investment fund manager, the Defendant is, and was at all material times, subject to the duty under section 116 of the *OSA* and/or section 2.1 of NI 81-107 to (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the TD Mutual Funds, and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

THE TD MUTUAL FUNDS

26. Each of the TD Mutual Funds is or was a trust governed by the terms of one of the Trust Instruments.
27. Each of the TD Mutual Funds is or was an “investment fund” and a “mutual fund” as those terms are defined in the *OSA*.
28. Each of the TD Mutual Funds is or was a reporting issuer in Ontario and in all other provinces of Canada.
29. To the best of the Plaintiff’s knowledge, the TD Mutual Funds as of March 11, 2019 are listed in **Schedule “A”** hereto.

THE TRUST INSTRUMENTS

30. The TD Mutual Funds are presently governed by the Current TD Managed Portfolios DOT, the Current TD Mutual Funds DOT and the Current TD Mutual Funds Trust Indenture. Each of those documents is materially identical to its predecessor Trust Instruments.
31. Under each of the Trust Instruments, the Defendant “agrees to hold in trust any and all property, real, personal or otherwise, tangible or intangible, which is hereafter transferred, conveyed or paid to it as trustee of the Fund and all income, profits and gains therefrom for the benefit of the unitholders hereunder” (or in substantially similar language).
32. The Class Members are or were unitholders of the TD Mutual Funds and are or were the beneficiaries of the trusts.
33. Pursuant to section 9.2 of the Current TD Mutual Funds DOT, section 9.02 of the Current TD Managed Portfolios DOT and section 7.1(b) of the Current TD Mutual Funds Trust Indenture (and the equivalent provisions of other Trust Instruments applicable to the TD

- 15 -

Mutual Funds at material times), the Defendant, as trustee of the TD Mutual Funds, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each TD Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

34. Pursuant to section 9.3 of the Current TD Mutual Funds DOT, section 9.03 of the Current TD Managed Portfolios DOT and section 7.2 of the Current TD Mutual Funds Trust Indenture (and the equivalent provisions of other Trust Instruments applicable to the TD Mutual Funds at material times), the Defendant, as manager of the TD Mutual Funds, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each TD Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Further, under those same provisions, the Defendant, as trustee of the TD Mutual Funds, is and was at all material times responsible for any loss that arises out of the failure by the Defendant to discharge its responsibilities as manager honestly, in good faith and in the best interests of each TD Mutual Fund or to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

35. Section 10.2 of the Current TD Mutual Funds DOT, section 10.02 of the Current TD Managed Portfolios DOT and section 8.2 of the Current TD Mutual Funds Trust Indenture (and the equivalent provisions of other Trust Instruments applicable to the TD Mutual Funds at material times) also make clear that the Defendant, as both trustee and manager of the TD Mutual Funds, is liable to the Class Members for any loss that arises out of the

- 16 -

failure by the Defendant to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each TD Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

36. Section 11.1 of the Current TD Mutual Funds DOT, section 11.01 of the Current TD Managed Portfolios DOT and section 9.1 of the Current TD Mutual Funds Trust Indenture (and the equivalent provisions of other Trust Instruments applicable to the TD Mutual Funds at material times) state that the Defendant, as trustee, can or does delegate full responsibility for providing management services to the TD Mutual Funds to itself, as manager. The Defendant, as trustee, did delegate responsibility for providing management services to itself at all material times.
37. Pursuant to section 9.1(d)(ii) of the Current TD Mutual Funds DOT, section 9.01(d)(i) of the Current TD Managed Portfolios DOT and section 7.1(c)(ii) of the Current TD Mutual Funds Trust Indenture (and the equivalent provisions of other Trust Instruments applicable to the TD Mutual Funds at material times), any remuneration paid by the Defendant, as trustee, for services performed for the TD Mutual Funds must be “reasonable remuneration”.
38. Pursuant to section 13.1 of the Current TD Mutual Funds DOT, section 13.01 of the Current TD Managed Portfolios DOT and section 7.6(a) of the Current TD Mutual Funds Trust Indenture (and the equivalent provisions of other Trust Instruments applicable to the TD Mutual Funds at material times), the Defendant, as trustee, pays itself, as manager, a fee for management services provided to the TD Mutual Funds. The Defendant receives management fees out of the assets of the TD Mutual Funds. The management fees are

- 17 -

calculated as a percentage of the net asset value of each series of each TD Mutual Fund (which management fees are calculated and accrued daily and paid monthly).

39. Prior to an amendment on July 25, 2017 of a predecessor Trust Instrument of the Current TD Mutual Funds DOT, an amendment on October 26, 2017 of a predecessor Trust Instrument of the Current TD Managed Portfolios DOT and an amendment on July 27, 2017 of a predecessor Trust Instrument of the Current TD Mutual Funds Trust Indenture, the Trust Instruments set out maximum management fees, stated as being “up to” a specified percentage of the net asset value of each series of each TD Mutual Fund.
40. Section 6.1(e) of the Current TD Mutual Funds DOT, section 6.01(d) of the Current TD Managed Portfolios DOT and section 5.1(e) of the Current TD Mutual Funds Trust Indenture (and the equivalent provisions of other Trust Instruments applicable to the TD Mutual Funds at material times) provide for the Defendant to accept a lower management fee with respect to units of a series of a TD Mutual Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a “management fee distribution”.
41. As stated in Simplified Prospectuses and Fund Facts Documents issued by the Defendant to permit the offering of units of the TD Mutual Funds, the Defendant, as manager of the TD Mutual Funds, may waive a portion or all of its management fees in respect of the TD Mutual Funds. The Defendant did waive a portion of its management fees in respect of certain TD Mutual Funds during the material time.
42. The payment of management fees to the Defendant out of the assets of the TD Mutual Funds reduces the net asset value of the TD Mutual Funds, which in turn reduces the value of unitholders’ units of the TD Mutual Funds. As stated in one or more of the Simplified

- 18 -

Prospectuses disseminated by the Defendant in respect of the TD Mutual Funds, management fees are among the fees and expenses that are paid by such TD Mutual Funds, “which will reduce the value of your [the investor’s] investment in the Fund.” Similarly, as stated in one or more Fund Facts Documents disseminated by the Defendant in respect of the TD Mutual Funds, management fees “affect you [the investor] because they reduce the fund’s returns.”

43. Pursuant to sections 3.1 and 3.8 of the Current TD Mutual Funds DOT, sections 3.01 and 3.08 of the Current TD Managed Portfolios DOT and sections 3.1 and 3.8 of the Current TD Mutual Funds Trust Indenture (and the equivalent provisions of other Trust Instruments applicable to the TD Mutual Funds at material times), the Defendant can redesignate or convert units of one series of a TD Mutual Fund into units of another series of the same TD Mutual Fund.
44. Pursuant to section 3.1 of the Current TD Mutual Funds DOT, section 3.01 of the Current TD Managed Portfolios DOT and section 3.1 of the Current TD Mutual Funds Trust Indenture (and the equivalent provisions of other Trust Instruments applicable to the TD Mutual Funds at material times), the Defendant can create additional series of units of the TD Mutual Funds.

TRAILING COMMISSIONS AND DISCOUNT BROKERS

45. The Defendant has paid and continues to pay a portion of the management fees that it receives out of the assets of the TD Mutual Funds to dealers, including Discount Brokers, as trailing commissions. The quantum of the trailing commission payable to a dealer is determined as a percentage of the value of the units of the TD Mutual Funds held by the

- 19 -

dealer's clients (which trailing commission is calculated and accrued daily and paid to the dealer no less frequently than quarterly).

46. The payment of management fees, within which the trailing commissions payable to Discount Brokers are embedded, depletes the assets of the TD Mutual Funds and reduces the value of the Class Members' units of those TD Mutual Funds and thereby diminishes their return on investment in the TD Mutual Funds.
47. Among other dealers, the TD Mutual Funds are sold through Discount Brokers. Discount Brokers are entities that provide order execution only services to investors. They are regulated by IIROC as "Dealer Members". Under the IIROC Rules, Discount Brokers apply to IIROC for approval to offer an "order-execution only service", which is defined as "the acceptance and execution of orders from customers for trades that the Dealer Member has not recommended and for which the Dealer Member takes no responsibility as to the appropriateness or suitability of orders accepted or account positions held." Such approval provides Discount Brokers with an exemption from compliance with IIROC Rules that impose requirements to assess the suitability of a client's orders and account positions. Accordingly, as a condition of the approval provided by IIROC to Discount Brokers to operate their discount brokerage businesses, Discount Brokers are prohibited from providing investment recommendations or advice to clients.
48. One of the Discount Brokers through which TD Mutual Funds are sold is TD Direct Investing, which is a division of TD Waterhouse. The Defendant and TD Waterhouse are both wholly-owned subsidiaries of TD Bank, and are affiliates of each other. Some of the Unearned Management Fees have been paid to TD Direct Investing, which is to the ultimate benefit of the Defendant's parent, TD Bank.

- 20 -

49. The Defendant knew, or ought to have known, that the Unearned Management Fees were being paid to Discount Brokers as trailing commissions, thereby reducing the value of the Class Members' units, in circumstances where those trailing commissions were not earned by the Discount Brokers because they are not providing services and advice to the Class Members.
50. The Simplified Prospectuses and Fund Facts Documents issued by the Defendant to permit the offering of units of the TD Mutual Funds set out the *maximum* annual percentage rates for trailing commissions payable in respect of the TD Mutual Funds. Prior to amendments made in 2017, the Simplified Prospectuses for the TD Mutual Funds set out the *maximum* annual percentage rates for management fees payable in respect of the TD Mutual Funds. Class Members are entitled to expect that the Defendant will comply with its duties to the Class Members and will not pay the maximum rate of trailing commission both to dealers that provide full advisory services to their clients and to Discount Brokers who provide no services or advice to their clients. Yet, the trailing commissions paid by the Class Members on each series of the TD Mutual Funds are identical to the trailing commissions paid on those same series by investors who hold their TD Mutual Funds through a full-service account.
51. The Defendant never disclosed to the Plaintiff the dollar amount of the trailing commissions paid to the Plaintiff's Discount Broker in respect of the units of TD Mutual Funds held by the Plaintiff.
52. The Defendant continues the practice of paying trailing commissions to Discount Brokers in respect of the TD Mutual Funds despite criticism of the practice and the imminent prohibition of the practice by regulators.

- 21 -

53. On January 10, 2017, the CSA released CSA Consultation Paper 81-408 – *Consultation on the Option of Discontinuing Embedded Commissions*, which addresses issues relating to mutual fund fees, including the payment of trailing commissions to dealers. In relation to the Canadian mutual fund industry generally, CSA Consultation Paper 81-408 states that, as at December 2015, “data suggests that \$25 billion of the total \$30 billion held in mutual funds in the [discount broker] channel (83%) remains in the full trailing commission paying fund series”. It concludes that “[t]he majority of DIY investors investing in mutual funds pay full trailing commission despite not receiving advice” and “many DIY mutual fund investors in the online/discount brokerage channel indirectly pay for services they do not receive.”
54. In a press release issued on May 8, 2017 entitled “Limit Series A Sales to Channels that Permit Advice: IFIC”, the Investment Funds Institute of Canada, which styles itself as the “voice of Canada’s investment funds industry”, called on regulators to ensure that mutual funds that carry a trailing commission are not sold through the Discount Broker channel.

The press release stated that:

The Investment Funds Institute of Canada (IFIC) is calling on regulators to establish rules to ensure that mutual funds carrying an embedded advisor fee are sold only in channels where advice is permitted.

“Investors who buy funds directly, for example through a discount broker, should be confident that they are not inadvertently overpaying by selecting a series that includes fees for services that are not available through that platform,” says Paul C. Bourque, Q.C., IFIC’s president and CEO.

Series A mutual funds bundle an advice fee within the product. Most companies already provide other series of funds with no or nominal trailer fees that investors can purchase if they are do-it-yourself investors or want to pay for advice separately. The industry’s proposal would advance the goal of ensuring that low-trailer or no-trailer funds are available to these types of investors in a more uniform and transparent way.

“IFIC members believe that consumers should be able to choose for themselves the products, services and payment methods that best meet their needs and preferences,”

- 22 -

Bourque stated. “Today’s proposal would help to achieve a goal that the industry shares with our regulators: to ensure that fees are aligned with the services that investors receive. It reflects the industry’s commitment to provide Canadian consumers with real and meaningful investment choices.”

55. On April 9, 2018, IIROC released its final guidance regarding order-execution only services offered by Discount Brokers. In Notice of Implementation 18-0075 dated April 9, 2018, IIROC stated that Discount Brokers face a conflict of interest by making available on their platforms mutual funds that pay a trailing commission for ongoing advice (e.g. Series A mutual funds). The Notice of Implementation stated:

We acknowledge that funds that pay an ongoing trailing commission to registrants (often described as a payment for advice and services provided to the investor by the registrant), and are made available by OEO firms (e.g., a Series A fund), raise a conflict of interest. Under our rules, a Dealer Member must address conflicts of interest considering the best interests of the client or clients.

In the Guidance, we indicate that OEO firms should consider how they will address any compensation-related conflicts when deciding which series (or series equivalent in the case of a PTF) of a fund to make (or not make) available on their platforms. We recognize that many OEO firms have already implemented practices to address this conflict.

We expect that OEO firms will make available, whenever possible, funds that do not pay a trailing commission for ongoing advice (often referred to as a Series D fund).

When a Series D fund is not available (e.g., because a fund family does not offer that type of series) and an OEO firm makes available another series that pays a trailing commission, we also expect the firm to address the conflict by rebating to the client the portion of the trailing commission for ongoing advice, or taking other similar steps.

A large majority of the publically available funds include a trailing commission. Management of the conflicts of interest relating to trailing commissions by OEO firms allows investors continued access to the widest possible range of investments.

56. On June 21, 2018, the CSA released CSA Staff Notice 81-330 – *Status Report on Consultation on Embedded Commissions and Next Steps*, in which the CSA announced its intention to publish rule changes that will prohibit the payment of trailing commissions to, and the solicitation and acceptance of trailing commissions by, dealers who do not make a suitability determination (e.g. Discount Brokers) in connection with the distribution of

- 23 -

prospectus qualified mutual fund securities. The CSA stated in CSA Staff Notice 81-330 that:

In our view, the fees paid by a vast majority of DIY investors in this channel [*i.e.* the discount brokerage channel] do not appear to align with the execution-only nature of the services they receive. We also observe no justifiable rationale for the practice of paying discount brokerage dealers an ongoing trailing commission for the sale of a mutual fund. For example, other securities including most ETFs are commonly purchased and sold by way of an upfront transaction fee. This ongoing payment may therefore be viewed as one that incentivizes the distribution of mutual funds that pay such an ongoing fee over those that do not (*i.e.* a payment for shelf space), giving rise to a conflict of interest. This is especially the case when the discount brokerage receives the same trailing commission as that of full-service dealers (which rate is typically intended to compensate full service dealers for the costs associated with providing investment advice). Moreover, in our view this fee also limits investor awareness and understanding of the fees associated with the purchase of such products in the discount brokerage channel.

57. Further to the announcement by the CSA on June 21, 2018, on September 13, 2018 the CSA published proposed amendments to securities regulatory instruments that will, when the amendments come into force, prohibit the payment of trailing commissions by fund organizations (which includes mutual fund managers) to dealers who do not make a suitability determination, such as order-execution-only dealers (*i.e.* Discount Brokers). The proposed amendments will prohibit the payment of mutual fund trailing commissions to Discount Brokers in any amount. The CSA stated that fund organizations will need to make available to Discount Brokers a class or series of securities of a mutual fund that does not pay a trailing commission, which will result in a corresponding reduction in the rate of the management fee charged on that class or series. Existing holdings of mutual funds will also need to be switched to the class or series of securities of the mutual fund that does not pay a trailing commission. The CSA also commented that the prohibition on the payment of trailing commissions by fund organizations to Discount Brokers will eliminate “a longstanding conflict between IFMs [investment fund managers] (who have been reluctant to offer non trailing commission-paying fund series in this channel), online/discount

- 24 -

brokerages (who have been satisfied to accept full trailing commission-paying funds), and DIY investors.”

58. On September 17, 2020, the CSA published for adoption final amendments to applicable securities regulatory instruments to prohibit the payment of trailing commissions (of any amount) by fund managers, including the Defendant, to dealers who do not make a suitability determination, including Discount Brokers. The prohibition on the payment of trailing commissions to Discount Brokers will come into force on June 1, 2022.
59. As alluded to in the above-noted press release of the Investment Funds Institute of Canada, some mutual fund families offer a series of their funds, typically called Series D, that is sold only through Discount Brokers. Series D (or similar discount series) pay a lower management fee than traditional retail series (*e.g.* Series A or Investor Series) because they include a reduced trailing commission to partially reflect the fact that “services and advice” are not being provided to investors through a Discount Broker.
60. While the Defendant currently offers Series D units for some of the TD Mutual Funds, it has not made Series D units available for all of the TD Mutual Funds. Further, even for the TD Mutual Funds that have been made available at some stage in Series D, other series of those TD Mutual Funds that carry a higher trailing commission have been held, and continue to be held, by Class Members through Discount Brokers. When the Defendant introduced Series D units of certain TD Mutual Funds, it failed to advise, permit and/or cause the Class Members to switch their existing units into Series D units.

- 25 -

61. On or around June 14, 2019, the Defendant carried out an automatic conversion of certain series of units of certain TD Mutual Funds to D-Series or e-Series units of those same TD Mutual Funds, but, among other caveats and limitations, only:
- (a) where such D-Series or e-Series was available;
 - (b) as a one-time conversion; and
 - (c) for TD Mutual Funds held within TD Direct Investing (and not other Discount Brokers).
62. In any event, the payment of trailing commissions of any amount to Discount Brokers in respect of the TD Mutual Funds, including on Series D units of the TD Mutual Funds, was in breach of the Defendant's duties to the Class Members, as pleaded herein.

RIGHTS OF ACTION

Breach of Trust

63. Under the Trust Instruments governing the TD Mutual Funds, the Defendant, as trustee of the TD Mutual Funds, has and had at all material times a duty to exercise its powers and discharge its duties honestly, in good faith and in the best interests of the TD Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.
64. The Defendant's duty, as trustee, under the Trust Instruments is a duty to act honestly, in good faith and in the best interests of the Class Members and the other unitholders of the TD Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. That duty is enforceable by the Class Members and breaches of that duty are actionable by the Class Members.

- 26 -

65. Alternatively, the Defendant's duty, as trustee, under the Trust Instruments includes a duty to act honestly, in good faith and in the best interests of the Class Members and the other unitholders of the TD Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. That duty is enforceable by the Class Members and breaches of that duty are actionable by the Class Members.
66. Alternatively, the Defendant's duty, as trustee, under the Trust Instruments is a duty to act honestly, in good faith and in the best interests of the TD Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. The TD Mutual Funds are trust relationships between the Defendant and the unitholders in respect of property held for the benefit of the unitholders. Any breach of the duty to the TD Mutual Funds causes direct loss and damage to the Class Members and the other unitholders of the TD Mutual Funds. That duty is enforceable by the Class Members and breaches of that duty are actionable by the Class Members.
67. Under the Trust Instruments governing the TD Mutual Funds, the Defendant, as manager of the TD Mutual Funds, has and had at all material times a duty to exercise its powers and discharge its duties honestly, in good faith and in the best interests of the TD Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. The Trust Instruments make the Defendant, as trustee, responsible for any loss that arises out of the failure of the Defendant, as manager, to act in accordance with that standard.
68. The Defendant's duty, as manager, under the Trust Instruments is a duty to act honestly, in good faith and in the best interests of the Class Members and the other unitholders of the

- 27 -

TD Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. That duty is enforceable by the Class Members and breaches of that duty are actionable by the Class Members against the Defendant as trustee.

69. Alternatively, the Defendant's duty, as manager, under the Trust Instruments includes a duty to act honestly, in good faith and in the best interests of the Class Members and the other unitholders of the TD Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. That duty is enforceable by the Class Members and breaches of that duty are actionable by the Class Members against the Defendant as trustee.
70. Alternatively, the Defendant's duty, as manager, under the Trust Instruments is a duty to act honestly, in good faith and in the best interests of the TD Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. The TD Mutual Funds are trust relationships between the Defendant and the unitholders in respect of property held for the benefit of the unitholders. Any breach of the duty to the TD Mutual Funds causes direct loss and damage to the Class Members and the other unitholders of the TD Mutual Funds. That duty is enforceable by the Class Members and breaches of that duty are actionable by the Class Members against the Defendant as trustee.
71. By its acts and omissions, the Defendant, as trustee, has breached its duty under the Trust Instruments and committed a breach of trust. The Defendant, as manager, has also breached its duty under the Trust Instruments and the Defendant, as trustee, is liable for

- 28 -

the loss to the Class Members arising out of that breach. The Defendant's breaches of duty and breaches of trust include (without limitation):

- (a) paying and/or receiving the Unearned Management Fees out of the assets of the TD Mutual Funds;
- (b) without limiting the generality of paragraph 71(a), where the Trust Instruments provided for maximum management fee percentage rates, electing to pay and/or receive the Unearned Management Fees;
- (c) failing to preserve the property of the TD Mutual Funds;
- (d) failing to maximize the value of the units of the TD Mutual Funds;
- (e) paying the Unearned Management Fees to the Discount Brokers for no purpose;
- (f) failing to ascertain the nature of any services being provided by Discount Brokers to the Class Members and to ascribe a reasonable value to those services, to ensure that the assets of the TD Mutual Funds are being used for proper purposes and in a reasonable amount;
- (g) failing to impose an obligation on Discount Brokers to provide particular services to Class Members in consideration for the trailing commissions;
- (h) failing to conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers are providing particular services to Class Members in respect of the TD Mutual Funds;
- (i) failing to conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers use or apply the trailing commissions for the

- 29 -

purpose of providing particular services to Class Members in respect of the TD Mutual Funds;

- (j) permitting series of units of the TD Mutual Funds carrying a trailing commission to be acquired and/or held through Discount Brokers;
- (k) failing to create and make available to Class Members through Discount Brokers a series of units of the TD Mutual Funds that carries no trailing commission;
- (l) failing to advise, permit and/or cause Class Members to redesignate, reclassify or convert their units of the TD Mutual Funds into a series of units that carries no trailing commission;
- (m) in the alternative to paragraphs 71(j) to 71(l):
 - (i) permitting non-Series D (or similar discount series) units of the TD Mutual Funds to be acquired and/or held through Discount Brokers;
 - (ii) failing to create and make available to Class Members through Discount Brokers Series D (or similar discount series) units of the TD Mutual Funds;
 - (iii) failing to advise, permit and/or cause Class Members to redesignate, reclassify or convert their non-Series D units of the TD Mutual Funds into Series D (or similar discount series) units of the TD Mutual Funds;
- (n) acting in a conflict of interest by simultaneously acting as both the trustee and the manager of the TD Mutual Funds, and thus paying the Unearned Management Fees to itself and negotiating the management fees with itself;
- (o) acting in a conflict of interest by paying trailing commissions to Discount Brokers for the Defendant's own benefit, effectively as a marketing expense to secure access

- 30 -

to the Discount Brokers' clients, resulting in increased management fees for the Defendant as the assets of the TD Mutual Funds grow through new investment capital from the Discount Broker platforms;

- (p) acting in a conflict of interest by failing to make available to Class Members holding TD Mutual Funds through Discount Brokers a series of units of the TD Mutual Funds that pays no trailing commission, or alternatively a reduced trailing commission, because of a concern that it would adversely affect the distribution of TD Mutual Funds through the full-service or advisory distribution channels and thereby reduce the Defendant's management fees;
- (q) acting in a conflict of interest by receiving a portion of the Unearned Management Fees for the purpose of paying such amount to TD Direct Investing, for the ultimate benefit of the Defendant's parent, TD Bank, when such amount could have been retained in the TD Mutual Funds for the benefit of Class Members;
- (r) failing to pay and/or accept a management fee reduced by the amount of the Unearned Management Fees and distributing (rebating) that amount to the Class Members as a "management fee distribution";
- (s) failing to waive payment of the Unearned Management Fees; and
- (t) the Defendant, as trustee of the TD Mutual Funds, failing to adequately supervise the Defendant, as manager of the TD Mutual Funds, and failing to prevent and/or rectify the misconduct of the Defendant, as manager of the TD Mutual Funds, as particularized herein, in breach of the manager's standard of care set out in the Trust Instruments and section 116 of the *OSA* and/or section 2.1 of NI 81-107.

- 31 -

72. The TD Mutual Funds, the Plaintiff and the other Class Members have suffered loss and damage as a result of the Defendant's breach of trust as particularized herein.

Breach of Fiduciary Duty

73. As trustee of each of the TD Mutual Funds, the Defendant is, and was at all material times, in a fiduciary relationship with the Class Members and owes, or owed at the material times, fiduciary duties to the Class Members.
74. As manager of the TD Mutual Funds, the Defendant is, and was at all material times, a trustee *de son tort* of the TD Mutual Funds. Pursuant to the Trust Instruments, the Defendant at all material times undertook responsibility for the administration of the day-to-day business and affairs of each TD Mutual Fund. To carry out that responsibility as manager, the Defendant has possession or control of the property of the TD Mutual Funds and administers that property. As trustee *de son tort* of each of the TD Mutual Funds, the Defendant is, and was at all material times, in a fiduciary relationship with the Class Members and owes, or owed at the material times, fiduciary duties to the Class Members. As a trustee *de son tort* of the TD Mutual Funds, the Defendant also has or had an obligation to abide by the duties and obligations of the trustee set out in the Trust Instruments.
75. Further or in the alternative, as manager of each of the TD Mutual Funds, the Defendant has significant discretion, power or control in relation to the business and affairs of the TD Mutual Funds and the assets of the TD Mutual Funds. The Defendant, as manager of the TD Mutual Funds, can unilaterally exercise that discretion, power or control so as to affect the Class Members' legal or substantial practical interests, including the Class Members' financial interests arising from their ownership of units of the TD Mutual Funds, the value of which are tied to the value of the assets of the TD Mutual Funds. The Class Members

- 32 -

are peculiarly vulnerable to the Defendant holding that discretion, power or control as manager of the TD Mutual Funds.

76. The Defendant as manager has expressly or impliedly undertaken to act in the best interests of the Class Members, including as follows:
- (a) by the standard of care binding on the Defendant as manager under the Trust Instruments and section 116 of the *OSA* and/or section 2.1 of NI 81-107;
 - (b) the Defendant is a signatory to the United Nations-supported Principles for Responsible Investment, pursuant to which the Defendant signed a declaration in which it acknowledges its “duty to act in the best long-term interests of our beneficiaries” and affirmed its “fiduciary role” and “fiduciary responsibilities”;
 - (c) the Defendant has agreed to comply with the Asset Manager Code of Professional Conduct of the CFA Institute, pursuant to which the Defendant has undertaken to, among other things, “[a]ct for the benefit of clients” and “[p]lace client interests before [its] own”, and has agreed that “[c]lient interests are paramount”; and
 - (d) by its public pronouncements, including as follows:
 - (i) the TD Bank Group’s website states that “TDAM is a fiduciary for its clients”;
 - (ii) in a news release dated July 22, 2008 announcing that the Defendant had signed on to the United Nations Principles for Responsible Investment, the Defendant stated that it would “help us achieve better risk-adjusted returns for our clients in a manner that is consistent with their investment objectives and our fiduciary obligations”; and

- 33 -

(iii) in a news release dated May 17, 2012 announcing the Defendant's adoption of the Asset Manager Code of Professional Conduct of the CFA Institute, the Defendant stated that: "This is our pledge to investors to keep their interests first and display the highest level of professional conduct."

77. Accordingly, as manager of each of the TD Mutual Funds, the Defendant is, and was at all material times, in a fiduciary relationship with the Class Members and owes, or owed at the material times, fiduciary duties to the Class Members.
78. By its acts and omissions, including (without limitation) the acts and omissions set out in paragraph 71 hereof, the Defendant breached its fiduciary duty to the Class Members.
79. The Plaintiff and the other Class Members have suffered loss and damage as a result of the Defendant's breach of fiduciary duty as particularized herein.

Disallowance of Improper Expenses Under Section 23.1 of the Trustee Act

80. The Unearned Management Fees are expenses paid by the Defendant from the trust property of the TD Mutual Funds.
81. The expenses are not properly incurred in carrying out the trust because they are on account of trailing commissions paid or payable to Discount Brokers, and such trailing commissions are not properly paid or payable to Discount Brokers because the Discount Brokers do not provide services or advice to the Class Members.
82. The payment of the expenses ought to be disallowed pursuant to section 23.1(2) of the *Trustee Act* (and, if necessary, the equivalent provisions of comparable Canadian legislation).

- 34 -

Prospectus Misrepresentation

83. The Plaintiff asserts against the Defendant the right of action for prospectus misrepresentation in section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
84. The Defendant has prepared, filed and disseminated Simplified Prospectuses and, since January 1, 2011, Fund Facts Documents, to permit the continuous offering to the public of units of the TD Mutual Funds.
85. The Fund Facts Documents are incorporated by reference into the relevant Simplified Prospectuses and form part of those Simplified Prospectuses.
86. Pursuant to section 56(1) of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation), the Simplified Prospectuses are and were required to provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed under the Simplified Prospectuses.
87. The Simplified Prospectuses are prospectuses for the purposes of section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
88. The Fund Facts Documents prepared, filed and disseminated by the Defendant in respect of the TD Mutual Funds have contained at all material times a common statement that trailing commissions are paid to dealers for the “services and advice” provided by those dealers to their clients.
89. That common statement is a misrepresentation within the meaning of the *OSA* (and, if necessary, the Other Canadian Securities Legislation). It falsely represents that trailing commissions are only paid to dealers that provide services and advice to investors, whereas

- 35 -

in fact trailing commissions are also paid to Discount Brokers even though they do not provide services or advice to their clients. The statement is, and was at all material times, material to the Class Members.

90. Starting on or around July 25, 2019, the Fund Facts Documents filed in respect of Series D units of TD Mutual Funds have stated that trailing commissions are paid “for the services that your discount brokerage firm provides to you.” The Defendant continues to represent that trailing commissions are paid for “services and advice” in Fund Facts Documents for other series of the TD Mutual Funds that continue to be held through Discount Brokers. By making that amendment to the Fund Facts Documents for Series D units, the Defendant has acknowledged that the reference to “services and advice” in the Fund Facts Documents is and was false, misleading and/or inaccurate.
91. The Defendant certified and signed the Simplified Prospectuses as required by NI 81-101 and Form 81-101F2, and is liable pursuant to section 130(1)(e) of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
92. The offering of units of the TD Mutual Funds to which the Simplified Prospectuses and Fund Facts Documents related constituted distributions of the units in Ontario and/or distributions of units from Ontario to persons outside of Ontario. The offering was governed by the *OSA* and its subsidiary instruments and regulations, and was carried out under Ontario securities laws.
93. The Plaintiff and the other Class Members have suffered loss and damage as a result of the Defendant’s acts and omissions as particularized herein.

DAMAGE SUFFERED BY THE CLASS MEMBERS

94. The TD Mutual Funds, the Plaintiff and the other Class Members have suffered loss and damage as a result of the Defendant's acts and omissions particularized herein.
95. As a result of the payment of the Unearned Management Fees out of the assets of the TD Mutual Funds, the value of the assets of the TD Mutual Funds has been significantly reduced.
96. As a result of the payment of the Unearned Management Fees out of the assets of the TD Mutual Funds, there has been a significant reduction in the value of the units of the TD Mutual Funds held by the Class Members and/or the value of the distributions received by the Class Members on their units of the TD Mutual Funds (whether received in cash or reinvested in additional units).
97. The Plaintiff and the other Class Members have also suffered loss and damage as a result of the loss of opportunity to earn a reasonable return on investment if the Unearned Management Fees had not been paid out of the assets of the TD Mutual Funds.
98. The Plaintiff and the other Class Members who continue to hold units of the TD Mutual Funds are suffering ongoing loss and damage as a result of the Defendant's acts and omissions particularized herein.
99. The Defendant knew, or ought to have known, that as a result of its acts and omissions particularized herein, the Class Members would suffer loss and damage.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

100. The Plaintiff pleads that this action has a real and substantial connection with Ontario because, among other things:

- (a) the Defendant is domiciled in Ontario;
- (b) the Defendant carries on business in Ontario;
- (c) each of the TD Mutual Funds is, or was at material times, a reporting issuer in Ontario;
- (d) the Simplified Prospectuses and Fund Facts Documents referred to herein were disseminated in Ontario;
- (e) a substantial portion of the Class Members reside in Ontario; and
- (f) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

RELEVANT LEGISLATION

101. The Plaintiff pleads and relies on the *CJA*, the *CPA*, the *Trustee Act* (and, if necessary, the equivalent provisions of comparable Canadian legislation), the *OSA* (and, if necessary, the Other Canadian Securities Legislation) and the *OBCA*.

PLACE OF TRIAL

102. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

- 38 -

April 6, 2018

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Lawyers for the Plaintiff

SCHEDULE "A"
TD MUTUAL FUNDS

1. TD Canadian Money Market Fund
2. TD Premium Money Market Fund
3. TD U.S. Money Market Fund
4. TD Ultra Short Term Bond Fund
5. TD Short Term Bond Fund
6. TD Canadian Bond Fund
7. TD Income Advantage Portfolio
8. TD Canadian Core Plus Bond Fund
9. TD Corporate Bond Plus Fund
10. TD Real Return Bond Fund
11. TD Global Income Fund
12. TD Global Core Plus Bond Fund
13. TD Global Unconstrained Bond Fund
14. TD High Yield Bond Fund
15. TD Global Conservative Opportunities Fund
16. TD Global Balanced Opportunities Fund
17. TD Monthly Income Fund
18. TD Tactical Monthly Income Fund
19. TD U.S. Monthly Income Fund
20. TD U.S. Monthly Income Fund – C\$
21. TD Balanced Income Fund
22. TD Diversified Monthly Income Fund
23. TD Strategic Yield Fund
24. TD Balanced Growth Fund
25. TD Dividend Income Fund
26. TD Canadian Low Volatility Fund
27. TD Dividend Growth Fund
28. TD Canadian Equity Fund
29. TD Canadian Value Fund
30. TD Canadian Small-Cap Equity Fund
31. TD U.S. Risk Managed Equity Fund
32. TD U.S. Low Volatility Fund
33. TD U.S. Low Volatility Currency Neutral Fund
34. TD North American Dividend Fund
35. TD U.S. Dividend Growth Fund

- 40 -

36. TD U.S. Blue Chip Equity Fund
37. TD U.S. Quantitative Equity Fund
38. TD U.S. Equity Portfolio
39. TD North American Small-Cap Equity Fund
40. TD U.S. Mid-Cap Growth Fund
41. TD U.S. Small-Cap Equity Fund
42. TD Global Risk Managed Equity Fund
43. TD Global Low Volatility Fund
44. TD International Growth Fund
45. TD Emerging Markets Low Volatility Fund
46. TD Asian Growth Fund
47. TD Emerging Markets Fund
48. Epoch U.S. Shareholder Yield Fund
49. Epoch U.S. Large-Cap Value Fund
50. Epoch Global Shareholder Yield Fund
51. Epoch Global Shareholder Yield Currency Neutral Fund
52. Epoch Global Equity Fund
53. Epoch International Equity Fund
54. Epoch European Equity Fund
55. TD Resource Fund
56. TD Precious Metals Fund
57. TD Global Entertainment & Communications Fund
58. TD Science & Technology Fund
59. TD Health Sciences Fund
60. TD Canadian Bond Index Fund
61. TD Balanced Index Fund
62. TD Canadian Index Fund
63. TD Dow Jones Industrial Average Index Fund
64. TD U.S. Index Fund
65. TD U.S. Index Currency Neutral Fund
66. TD Nasdaq Index Fund
67. TD International Index Fund
68. TD International Index Currency Neutral Fund
69. TD European Index Fund
70. TD US\$ Retirement Portfolio
71. TD Retirement Conservative Portfolio
72. TD Retirement Balanced Portfolio

- 41 -

73. TD Advantage Balanced Income Portfolio
74. TD Advantage Balanced Portfolio
75. TD Advantage Balanced Growth Portfolio
76. TD Advantage Growth Portfolio
77. TD Advantage Aggressive Growth Portfolio
78. TD Comfort Conservative Income Portfolio
79. TD Comfort Balanced Income Portfolio
80. TD Comfort Balanced Portfolio
81. TD Comfort Balanced Growth Portfolio
82. TD Comfort Growth Portfolio
83. TD Comfort Aggressive Growth Portfolio
84. TD Fixed Income Pool
85. TD Risk Management Pool
86. TD Canadian Equity Pool
87. TD Global Equity Pool
88. TD Tactical Pool
89. TD Income Opportunities Pool
90. TD Opportunities Pool
91. TD Canadian Low Volatility Pool
92. TD Risk Reduction Pool
93. TD Risk Reduction Pool – US\$
94. TD Canadian Corporate Bond Fund
95. TD U.S. Corporate Bond Fund
96. TD Canadian Diversified Yield Fund
97. TD Canadian Blue Chip Dividend Fund
98. TD Canadian Large-Cap Equity Fund
99. TD Core Canadian Value Fund
100. Epoch U.S. Blue Chip Equity Fund
101. Epoch U.S. Blue Chip Equity Currency Neutral Fund
102. TD International Stock Fund
103. TD Managed Income Portfolio
104. TD Managed Income & Moderate Growth Portfolio
105. TD Managed Balanced Growth Portfolio
106. TD Managed Aggressive Growth Portfolio
107. TD Managed Maximum Equity Growth Portfolio
108. TD FundSmart Managed Income & Moderate Growth Portfolio
109. TD FundSmart Managed Balanced Growth Portfolio

- 42 -

110. TD FundSmart Managed Aggressive Growth Portfolio
111. TD Managed Index Income Portfolio
112. TD Managed Index Income & Moderate Growth Portfolio
113. TD Managed Index Balanced Growth Portfolio
114. TD Managed Index Aggressive Growth Portfolio
115. TD Managed Index Maximum Equity Growth Portfolio
116. TD Managed Income ETF Portfolio
117. TD Managed Income & Moderate Growth ETF Portfolio
118. TD Managed Balanced Growth ETF Portfolio
119. TD Managed Aggressive Growth ETF Portfolio
120. TD Managed Maximum Equity Growth ETF Portfolio
121. TD Global Equity Focused Fund

WESTWOOD v. TD ASSET MANAGEMENT INC.

Court File No: CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**THIRD FRESH AS AMENDED
STATEMENT OF CLAIM**

Siskinds LLP

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London, ON N6A 3V8

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Anthony O'Brien (LSO#: 56129U)

Garett M. Hunter (LSO#: 71800D)

Eva Markowski (LSO#: 74162Q)

Jin-Zhi Pao (LSO#: 80151M)

Tel: 519-660-7872

Fax: 519-660-7873

Lawyers for the Plaintiff

This is Exhibit "B" mentioned and referred to in Affidavit of Charles M. Wright AFFIRMED BEFORE ME remotely in accordance with O. Reg. 431/20, this 16th day of September, 2024. The affiant was located in the City of London, Province of Ontario, and the commissioner, Donna McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario,
for Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

Court File No.: CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)	THURSDAY, THE 27 TH
)	
JUSTICE EDWARD P. BELOBABA)	DAY OF FEBRUARY, 2020

B E T W E E N :

GARY STENZLER

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(CERTIFICATION)

THIS MOTION, by the Plaintiff for an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c 6 (the “CPA”) was heard on January 10, 2020 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed on this motion, the Motion Record of the Plaintiff, Responding Motion Record of the Defendant, Reply Motion Record of the Plaintiff, Supplementary Reply Motion Record of the Plaintiff, Certification Factum of the Plaintiff, Brief of Authorities of the Plaintiff, Certification Factum of the Defendant, Brief of Authorities of the Defendant, Reply Certification Factum of the Plaintiff, Reply Brief of Authorities of the Plaintiff, Brief of Documents of the Plaintiff, Brief of Documents of the Defendant, Compendium of the Plaintiff, Compendium of the Defendant, Condensed Brief of Authorities of the Defendant, and on hearing the submissions of the lawyer(s) for the Plaintiff and the Defendant:

1. **THIS COURT ORDERS** that for the purposes of this order, except to the extent that they are modified in this order, the definitions set out in the Second Fresh as Amended Statement of Claim (the “Claim”), attached hereto as **Schedule “A”**, apply to and are incorporated into this order.
2. **THIS COURT ORDERS** that the within action is certified as a class proceeding pursuant to the *CPA* as against the Defendant, subject to the provisions of this order.
3. **THIS COURT ORDERS** that the Class is defined as:
 - (a) All persons, wherever they may reside or be domiciled, who held or hold, at any time prior to the conclusion of the trial of the common issues in this proceeding, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.
 - (b) Excluded Persons means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; and the past and present members of the independent review committee of each TD Mutual Fund.
4. **THIS COURT ORDERS** that the following issues are certified as common issues for the entire Class:

Breach of Trust

- (a) Did the Defendant, as the trustee of the TD Mutual Funds, breach the Standard and Duty of Care set out in the Trust Instruments? If so, when and how?
- (b) Did the Defendant, as the manager of the TD Mutual Funds, breach the Standard and Duty of Care set out in the Trust Instruments? If so, when and how?
- (c) Is the Defendant liable to account to the Class Members?

Breach of Fiduciary Duty

- (d) Did the Defendant, as the trustee of the TD Mutual Funds, owe a fiduciary duty? If so, to whom was the duty owed?

- (e) Did the Defendant, as the manager of the TD Mutual Funds, owe a fiduciary duty? If so, to whom was the duty owed?
- (f) If the answer to the first question in (d) and/or (e) is yes, did the Defendant breach its fiduciary duty? If so, when and how?

Section 23.1 of the Trustee Act

- (g) Should the payment of the Unearned Management Fees by the Defendant be disallowed as an expense pursuant to section 23.1 of the *Trustee Act*?

Prospectus Misrepresentation

- (h) Did the Fund Facts Documents, and the Simplified Prospectuses which incorporate the Fund Fact Documents, contain a misrepresentation within the meaning of the *OSA* (and, as applicable, the Other Canadian Securities Legislation)?
- (i) If the answer to (h) is yes, is the Defendant liable to the Class Members pursuant to section 130 of the *OSA* (and, as applicable, the Other Canadian Securities Legislation)?

Remedies

- (j) If the Defendant is found liable on any claims asserted by the Class Members, as set out in (a) to (i) above, what remedies, including damages and/or equitable remedies, are the Class Members entitled to receive?
- (k) How should recoveries under each type of remedy be measured?
- (l) Can the amount of any monetary relief be determined on an aggregate basis? If so, what is the amount and what is the appropriate method or procedure for distributing that amount to the Class Members?

Interest

- (m) Should the Defendant be ordered to pay an equitable rate of interest and/or pre-judgment and post-judgment interest pursuant to the *CJA*? If so, what is the appropriate measure or amount of such interest?

Administration and Distribution

- (n) Should the Defendant pay the costs of administering and distributing the recovery? If so, what amount should the Defendant pay?
5. **THIS COURT ORDERS** that Gary Stenzler is appointed as the representative plaintiff for the Class.
6. **THIS COURT ORDERS** that the relief sought by the Class is as set out in the Claim.
7. **THIS COURT ORDERS** that the nature of the claims asserted on behalf of the Class are relief arising out of or under: (i) breach of trust; (ii) breach of fiduciary duty; (iii) section 23.1 of the *Trustee Act*; and (iv) section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
8. **THIS COURT ORDERS** that the Litigation Plan attached hereto as **Schedule “B”** is hereby approved.
9. **THIS COURT ORDERS** that, in respect of the relief sought in paragraphs 1(h) to (k) of the Plaintiff’s Amended Notice of Motion dated July 26, 2019, the motion is adjourned *sine die*.
10. **THIS COURT ORDERS** that the Court shall, on subsequent motion brought by the Plaintiff, approve a form of notice of certification of this action as a class proceeding (the “Notice”), the manner of dissemination of the Notice, the procedure by which Class Members may opt out of the class proceeding, and the party or parties responsible for the costs of disseminating the Notice and receiving opt outs.
11. **THIS COURT ORDERS** that the Defendant will pay \$75,000 in costs to the Plaintiff, as agreed to by the parties.

Signed: *Justice Edward P. Belobaba*

Notwithstanding Rule 59.05, this Judgment [Order] is effective from the date it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Judgment [Order] need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party to this Judgment [Order] may nonetheless submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.

GARY STENZLER
Plaintiff

and
TD ASSET MANAGEMENT INC.
Defendant

Court File No.: CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER
(CERTIFICATION)**

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Lawyers for the Plaintiffs

This is Exhibit "C" mentioned and referred to in Affidavit of Charles M. Wright AFFIRMED BEFORE ME remotely in accordance with O. Reg. 431/20, this 16th day of September, 2024. The affiant was located in the City of London, Province of Ontario, and the commissioner, Donna McEvoy, was located in the Town of Whitby, Province of Ontario.

DocuSigned by:

Donna McEvoy

Donna Lynn McEvoy, Commissioner, etc.
Province of Ontario,
for Siskinds LLP Barristers and Solicitors
Expires: December 6, 2025

Court File No. CV-18-595380-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)	TUESDAY THE 14TH
)	
JUSTICE EDWARD P. BELOBABA)	DAY OF DECEMBER 2021

B E T W E E N :

PETER WESTWOOD

Plaintiff

- and -

TD ASSET MANAGEMENT INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(CERTIFICATION NOTICE AND OPT-OUT PROCESS)**

THIS MOTION, made by the Plaintiff for an Order approving the certification notice, the notice plan, setting the opt-out process and deadline, and appointing RicePoint Administration Inc. ("**RicePoint**") as notice and opt-out administrator was heard this day in writing;

ON READING the materials filed by the Plaintiff;

AND ON BEING ADVISED that the Defendant does not oppose this Order and that RicePoint consents to being appointed as notice and opt-out administrator:

1. **THIS COURT ORDERS** that for the purposes of this order, except to the extent that they are modified in this order, the definitions set out in the Third Fresh as Amended Statement of Claim apply to and are incorporated into this order.

2. **THIS COURT ORDERS** that RicePoint is hereby appointed as the notice and opt-out administrator and will perform the duties and responsibilities set out herein, and any other related duty or responsibility.

3. **THIS COURT ORDERS** that the long-form notice, short-form notice and internet banner, substantially in the form attached hereto as Schedules “A”, “B” and “C”, respectively, are hereby approved.

4. **THIS COURT ORDERS** that the notices shall be published and disseminated by Ricepoint (or Siskinds LLP (“**Class Counsel**”), as applicable) substantially in the following manner:

(a) Short-form notice:

- (i) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
- (ii) provided by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the action;
- (iii) disseminated as a news release in Canada across Canada NewsWire (in English and French);
- (iv) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
- (v) published once in the business section of *La Presse*, in French;

- (vi) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they post the notice on their electronic message/news boards;
 - (vii) published as a 2-week sponsored news link on Stockhouse;
 - (viii) filed by the Defendant as a news release on SEDAR;
- (b) Long-form notice:
- (i) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (ii) provided by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the action;
- (c) Internet banner:
- (i) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days.
5. **THIS COURT ORDERS** that the opt-out form (“**Opt-Out Form**”), substantially in the form attached as Appendix “A” to the long-form notice, is hereby approved.
6. **THIS COURT ORDERS** that the deadline to opt out of the action (the “**Opt-Out Deadline**”) is the date that is ninety (90) days after the day on which the short-form notice is published in *The Globe and Mail*.

7. **THIS COURT ORDERS** that a person who opts out of this class proceeding by the Opt-Out Deadline, by complying with the instructions set out in the long-form notice and fully completing an Opt-Out Form, shall not be a Class Member on and after the date that such person opts out of the class proceeding.
8. **THIS COURT ORDERS** that the costs of disseminating notice and receiving Opt-Out Forms shall be paid by the Plaintiff.
9. **THIS COURT ORDERS** that there shall be no costs of this motion.

Signed: *Justice Edward Belobaba*

Notwithstanding Rule 59.05, this Judgment [Order] is effective and binding from the date it is made and is enforceable without any need for entry and filing. Any party to this Judgment [Order] may submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.

SCHEDULE “A”

TD MUTUAL FUNDS CLASS ACTION REGARDING TRAILING COMMISSIONS PAID TO DISCOUNT BROKERS

NOTICE OF CERTIFICATION AND OPT-OUT DEADLINE

Read this notice carefully as it may affect your legal rights

This notice is to certain investors in the units of TD Mutual Funds other than certain persons and entities associated with the defendant, further described below (“**Class**” and “**Class Members**”).

THE CERTIFICATION ORDER

By Orders dated February 27, 2020 and February 5, 2021, the Ontario Superior Court of Justice (“**Court**”) has certified, pursuant to the *Class Proceedings Act, 1992*, *Peter Westwood v TD Asset Management Inc.*, File No. CV-18-595380-00CP (“**Class Action**”) as a class proceeding. The Court has appointed Peter Westwood as the representative plaintiff for the Class, defined as follows:

All persons, wherever they may reside or be domiciled, who held or hold, at any time prior to the conclusion of the trial of the common issues in this proceeding, units of a TD Mutual Fund through a Discount Broker, except for the Excluded Persons.

The Class Action pertains to TD Mutual Funds organized as trusts. The “TD Mutual Funds” are defined as:

All mutual fund trusts (including, without limitation, all series of units thereof) of which the Defendant is trustee, was trustee or may be trustee at any time prior to the conclusion of the trial of the common issues in this proceeding (but only in respect of the period during which the Defendant is trustee, was trustee or may be trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been or may be terminated, (ii) those mutual funds that have been or may be merged into other mutual funds, and (iii) those mutual funds that have undergone or may undergo name changes;

Excluded from the Class are TD Asset Management Inc. (“**Defendant**”), its past and present parents, subsidiaries, affiliates, officers, directors, senior

employees, legal representatives, heirs, predecessors, successors and assigns, and the past and present members of the independent review committee of each TD Mutual Fund.

Certification is a procedural matter that defines the form of the class action. The merits of the claims in the action, and the allegations of fact on which the claims are based, have not been finally determined by the Court. The Defendant disputes the claims asserted against it.

The Class Action will now proceed to trial as a class action. The Court has identified the issues that will be dealt with collectively. The Class Action will proceed in Toronto, Ontario.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendant paid trailing commissions, out of the TD Mutual Fund assets, to Discount Brokers. The TD Mutual Funds are trusts governed by trust instruments. The Defendant is both trustee and manager of the TD Mutual Funds. It is alleged that the Defendant breached its duties as a trustee and fiduciary because the trailing commissions paid to Discount Brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendant made misrepresentations about the nature of the trailing commission payments in the fund facts documents it has prepared and filed with securities regulators to permit the sale of units of the TD Mutual Funds.

On behalf of the Class, the Class Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian Provinces and Territories. Additionally, the Class Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust and fiduciary duty.

If you wish to pursue other claims against the Defendant relating to the matters at issue in the Class Action, you should immediately seek independent legal advice.

**DO NOTHING IF YOU WANT TO PARTICIPATE IN
THE CLASS ACTION**

Class Members who want to participate in the Class Action are automatically included and do not have to do anything at this time.

**YOU MUST OPT OUT IF YOU DO NOT WANT TO BE
BOUND BY THE CLASS ACTION**

Each Class Member who does not validly opt out of the Class Action will be bound by the terms of any judgment or settlement, whether favourable or not, and will not be allowed to prosecute an independent action.

Class Members who do not want to be bound by the outcome of the Class Action must "opt out," meaning that they must exclude themselves from the Class Action in accordance with the following procedure.

If you wish to opt out of the Class Action, you must complete, sign and return the opt-out form provided at Appendix "A" to RicePoint Administration Inc.

In order for your opt-out to be valid, your complete and signed opt-out form must be postmarked or received by RicePoint Administration Inc. by no later than [DATE].

A Class Member who opts out will not be entitled to participate in the Class Action.

CLASS COUNSEL AND LEGAL FEES

The representative plaintiff and the Class are represented by Siskinds LLP ("**Class Counsel**"). Class Counsel are conducting the Class Action on a contingent fee basis.

In the event of success, Class Counsel will make a motion to the Court for approval of their fees and disbursements to be paid from the funds recovered in the Class Action.

A Class Member will not be required to pay any costs in the event that the Class Action is unsuccessful.

Class Members have the right to seek intervenor status in the Class Action. A Class Member who intervenes in the Class Action may be required to pay legal costs arising from the Class Action.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information are available on Class

Counsel's websites at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions>.

Questions relating to the Class Action may be directed to Class Counsel:

English:

Anthony O'Brien
Siskinds LLP
Suite 302, 100 Lombard Street
Toronto, ON, Canada M5C 1M3
Tel: ***
Email: ***

En français:

Karim Diallo
Siskinds, Desmeules s.e.n.c.r.l.
43, rue de Buade, bureau 320
Québec, Québec G1R 4A2
Tel: ***
Email: ***

***The publication of this notice was authorized by the
Ontario Superior Court of Justice***

(PLEASE CIRCLE THE APPROPRIATE LANGUAGE)

I believe that **I am / the organization that I represent is** a member of the Class in the Class Action.

I believe that **I am not / the organization that I represent is not** amongst the persons and entities excluded from the Class Action.

I understand that by opting out of the Class Action, I **will not be eligible / the organization that I represent will not be eligible** for any benefit that may be available to the Class upon resolution of this matter, if and when such resolution may occur.

I, _____ (print your full name), **OPT OUT FROM THE CLASS ACTION** and wish to be excluded from this class action.

I wish to opt out from this class action for the following reason(s) (*optional*):

_____.

I, _____ (print your full name), **CERTIFY** that the information provided herein is complete and true.

Date

Signature

In order to validly opt out, you must complete and send this Opt-Out Form by no later than [DATE] to:

TD Mutual Funds Class Action
c/o RicePoint Administration Inc.

SCHEDULE “B”*DRAFT TEXT (subject to design)*

<p>TD MUTUAL FUNDS CLASS ACTION REGARDING TRAILING COMMISSIONS PAID TO DISCOUNT BROKERS NOTICE OF CERTIFICATION AND OPT-OUT DEADLINE</p>
<p>HAVE YOU HELD UNITS OF A TD MUTUAL FUND THROUGH A DISCOUNT BROKER?</p>
<p>The Superior Court of Justice of Ontario has certified a class action which permits a defined group of investors (the “Class”) to pursue claims against TD Asset Management Inc. (“TDAM”). It is alleged that TDAM paid excessive, inflated, and/or unearned trailing commissions to Discount Brokers out of the assets of the TD Mutual Fund trusts. The class action claims monetary damages on behalf of the Class. The allegations made in the class action have not been proven and are contested by TDAM.</p>
<p>If you wish to participate in the class action, DO NOTHING. If you <u>do not</u> wish to participate in the class action, be bound by or receive any benefits from it, you must opt out by sending the opt-out form to RicePoint Administration Inc. by [DATE].</p>
<p>To obtain a copy of the opt-out form or for other important information regarding the class action:</p> <ul style="list-style-type: none"> • Visit https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/http://www.siskinds.com/blackberry/ • Call toll-free *** (North America) • Call *** (Outside North America)

***The publication of this notice was authorized by
the Superior Court of Justice of the Province of Ontario***

SCHEDULE “C”

Notice of Certification of a Class Action on behalf
of Investors in

TD MUTUAL FUNDS

Have you held units of a TD mutual fund through
a discount brokerage?

You may be included in a class action certified by
the Ontario Superior Court of Justice.

Click to learn your legal rights, including how to
opt-out of the class action.

[https://www.siskinds.com/class-action/mutual-
fund-trailing-commissions/](https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(CERTIFICATION NOTICE AND OPT-OUT
PROCESS)**

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Lawyers for the Plaintiff

WESTWOOD v. TD ASSET MANAGEMENT INC.

Court File No. CV-18-595380-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF CHARLES M. WRIGHT

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